MISSISSIPPI CODE 1972

Annotated

Professions and Vocations

Title 73

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VOLUME 15A

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME FIFTEEN A

PROFESSIONS AND VOCATIONS

§§ 73-1-1 to 73-75-27

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2017 REGULAR LEGISLATIVE SESSION AND 1ST
EXTRAORDINARY LEGISLATIVE SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. Summer
Attorney General

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PUBLISHER'S FOREWORD

This 2017 Replacement Volume 15A of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 Volume 15A, the 2000 Replacement Volume 15A, the 2004 Replacement Volume 15A, the 2008 Replacement Volume 15A, and the 2012 Replacement Volume 15A, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2017 Regular Session and 1st Extraordinary Session.

This volume contains the text of Title 73 of the Mississippi Code of 1972 Annotated, as amended through the 2017 Regular Legislative and 1st Extraordinary Sessions.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

PUBLISHER'S FOREWORD

A comprehensive Index appears at the end of this volume.

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

September 2017 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
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— Amendment Notes
— Analyses
— Attorney General Opinions
— Code Status
— Comparable Legislation from other States
— Court Rules
— Cross References
— Editor's Notes
— Effective Dates
— Federal Aspects
— Index
— Joint Legislative Committee Notes
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— Organization and Numbering System
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— Source Notes
— Statute Headings
— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading “Attorney General Opinions.” The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the

Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States.*

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
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- Allocation of Acts of Legislature, 1931 — 1972.
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- Consolidated Tables of amendments and repeals of 1942 Code sections.
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CHAPTER 1

Architects

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§ 73-1-1. License required.

In order to safeguard life, health and property, no person shall practice architecture in this state, or use the title "architect," or any prefix, suffix or other form thereof, or any title, sign, card or device to indicate that such person is practicing architecture, or is an architect, unless such person shall have secured from the board a license as hereinafter set forth, as architect, in the manner hereinafter provided, and shall thereafter comply with the provisions of this chapter.

SOURCES: Codes, 1942, § 8632-01; Laws, 1954, ch. 320, § 1; Laws, 1976, ch. 363, § 1; reenacted, Laws, 1983, ch. 377, § 1, eff from and after July 1, 1983.

Cross References — Authority of a board of supervisors of a county to enter into contracts for professional services with architects licensed by the State Board of Architecture, see § 19-3-69.

Disciplinary procedures and penalties for a violation of this section, see § 73-1-29.

JUDICIAL DECISIONS

1. In general.

An architect is required to exercise ordinary professional skills and diligence and such duty is nondelegable. U.R.S. Co. v. Gulfport-Biloxi Regional Airport Auth., 544 So. 2d 824 (Miss. 1989).

A licensed and registered architect who undertakes a project is alone responsible, and delegates any part of his duties at his peril. State Bd. of Registration for Professional Eng'rs v. Rogers, 239 Miss. 35, 120 So. 2d 772 (1960), error overruled, 239 Miss. 44, 121 So. 2d 720 (1960).

RESEARCH REFERENCES

ALR. Practice of architecture by corporation. 56 A.L.R.2d 726.

What amounts to architectural or engineering services within license requirements. 82 A.L.R.2d 1013.

Architect's liability for personal injury or death allegedly caused by improper or defective plans or design. 97 A.L.R.3d 455.

Am Jur. 5 Am. Jur. 2d, Architects §§ 1 et seq.

2 Am. Jur. Pl & Pr Forms (Rev), Architects, Forms 1 et seq.

CJS. 6 C.J.S., Architects §§ 2 et seq.

Practice References. The American Institute of Architects Legal Citator (Matthew Bender).

§ 73-1-3. Definitions.

For purposes of this chapter, the following terms shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Board" means the State Board of Architecture.

(b) "Architect" means a person who engages in the practice of architecture as hereinafter defined.

(c) A person engaging in the practice of architecture, within the meaning and intent of this chapter, is one who holds himself out as able to perform any professional service such as planning, design, including aesthetic and structural designs, and consultation in connection therewith, or responsible inspection of construction, in connection with (except as specifically exempted herein) any buildings, structures, or projects, or the equipment or utilities thereof, or the accessories thereto, wherein the safeguarding of life, health or property is concerned or involved, when such professional service requires the application of the art and science of construction based upon the principles of mathematics, aesthetics, functional planning, and the physical sciences; provided that nothing in this definition shall be construed as encompassing or limiting the practice of engineering as that practice is provided for under the laws of this state.

(d) "Registrant" means architect or registered architect.

SOURCES: Codes, 1942, §§ 8632-02, 8632-20; Laws, 1954, ch. 320, §§ 2, 20; Laws, 1976, ch. 363, § 2; reenacted, Laws, 1983, ch. 377, § 2; Laws, 1988, ch. 578, § 1, eff from and after July 1, 1988.

Cross References — Payment and deposit in state treasury of funds received by state board of architecture, see § 73-1-43.

Regulation of practice of engineering, see §§ 73-13-1 et seq.

ATTORNEY GENERAL OPINIONS

Practice of architecture, as defined in Miss. Code Section 73-1-3(c), does not specifically include preparation of land subdivision plans, storm water management, grading, drainage or erosion and sediment control plans; Miss. Code Section 73-1-3(c) does includes within "practice of architecture" planning of buildings, structures or projects or equipment or utilities thereof or the accessories thereto; "buildings", "structures", "projects", "utilities" and "accessories" are not defined by Miss. Code Section 73-1-3(c), therefore, architects are authorized to prepare and submit site and subdivision plans. Kilpatrick, Jan. 8, 1993, A.G. Op. #92-0964.

RESEARCH REFERENCES

ALR. Architect's liability for personal injury or death allegedly caused by improper or defective plans or design. 97 A.L.R.3d 455.

Am Jur. 5 Am. Jur. 2d, Architects §§ 1, 2.

CJS. 6 C.J.S., Architects § 1.

Practice References. The American Institute of Architects Legal Citator (Matthew Bender).

§ 73-1-5. Appointment of state board of architecture.

The State Board of Architecture is composed of five (5) members who are licensed architects residing in this state and who have been engaged in the practice of architecture not less than seven (7) years. It is the duty of the board to carry out the purposes of this chapter as herein provided.

The Governor shall appoint the members of the board, and each member shall serve for a term of five (5) years. The terms shall be staggered so that the term of not more than one (1) member shall expire each year on June 1.

Each member shall hold over after the expiration of his term until his successor is duly appointed and qualified. The Governor shall fill any vacancy occurring in the membership of the board for the unexpired term of such membership. The Governor may remove any of the members of said board for inefficiency, neglect of duty or dishonorable conduct.

SOURCES: Codes, 1930, § 3611; 1942, § 8632-03; Laws, 1928, ch. 133; Laws, 1954, ch. 320, § 3; reenacted without substantive change, Laws, 1983, ch. 377, § 3; Laws, 1988, ch. 578, § 2, eff from and after July 1, 1988.

Cross References — General powers and duties of governor, see § 7-1-5.

RESEARCH REFERENCES

Am Jur. 5 Am. Jur. 2d, Architects §§ 3 to 5.

§ 73-1-7. Organization, oath and bond of treasurer.

The members of the board shall, before entering upon the discharge of their duties, take and subscribe an oath before any officer authorized to administer oaths in the state, for the faithful performance of duty, and file same with the Secretary of State. The members of the board shall as soon as possible, after their appointment and qualification, meet and shall annually thereafter in the month of January elect from their number a president, and a secretary who shall also be treasurer. The treasurer shall file a bond in the penal sum of Three Thousand Dollars ($3,000.00) with the Secretary of State, such bond to be accepted and approved by the Secretary of State before the treasurer shall enter upon the duties of his office.

SOURCES: Codes, 1930, § 3612; 1942, § 8632-04; Laws, 1928, ch. 133; Laws, 1954, ch. 320, § 4; reenacted without change, Laws, 1983, ch. 377, § 4; Laws, 1988, ch. 578, § 3, eff from and after July 1, 1988.

§ 73-1-9. Rules, records, seal, quorum of board.

The board shall adopt all necessary rules, regulations and bylaws to govern its proceedings not inconsistent with this chapter or the laws of this state. The board shall adopt a seal, and the secretary shall have the care and custody thereof, and shall keep a record of all proceedings of the board, which shall always be open to public examination. Three members of the board shall constitute a quorum.

SOURCES: Codes, 1930, § 3613; 1942, § 8632-05; Laws, 1928, ch. 133; Laws, 1954, ch. 320, § 5; reenacted without substantive change, Laws, 1983, ch. 377, § 5, eff from and after July 1, 1983.

§ 73-1-11. Compensation and expense of board.

The board is hereby authorized to pay from registration and other fees provided for herein the expenses of said board and the office thereof, the examinations held by said board, the bond premium of the treasurer, the pay of clerks or assistants hired by the board in the performance of its duties, attorney's fees for services rendered in connection with the affairs of the board, and fees and necessary expenses incident to cooperation with national boards and like boards of other states, and in no case shall any of such fees or expenses be paid by the state of Mississippi or be charged against said state.

The members of the board shall be entitled to receive a per diem in such amount as shall be set by resolution of the board but not to exceed the amount provided for in Section 25-3-69, and shall be entitled to be reimbursed for their traveling expenses and hotel expenses incurred in the pursuance of their duties. The secretary and treasurer of said board shall receive such annual compensation as shall, by resolution adopted by the board, be provided by the board, subject to the approval of the state personnel board.

SOURCES: Codes, 1930, § 3614; 1942, § 8632-06; Laws, 1928, ch. 133; Laws, 1954, ch. 320, § 6; reenacted and amended, Laws, 1983, ch. 377, § 6, eff from and after July 1, 1983.

Cross References — Annual certificate of renewal fees, see § 73-1-27.

Payment and deposit in state treasury of funds received by state board of architecture, see § 73-1-43.

§ 73-1-13. Rules and regulations for examination and registration.

(1) The board shall adopt rules and regulations for the eligibility, examination and registration of applicants desiring to practice architecture in accordance with this chapter and may amend, modify or repeal such rules and regulations.

The board shall receive applications for registration as an architect only on forms prescribed and furnished by the board and upon receipt of such application may approve such applicant, providing such applicant meets the following requirements:

(a) The applicant must have a professional degree in architecture from a school or college of architecture on the list of accredited schools of architecture issued by the National Architectural Accrediting Board;

(b) The applicant must have been enrolled for a minimum of one (1) year in, and have completed all requirements of, a practical work internship program patterned after the National Council of Architectural Registration Boards intern-architect development program that will be prepared, adopted and approved by the board and must have received from the board a certification by the board that the applicant has met or exceeded the work requirements of the board. The internship work program shall include but not be limited to the following subjects:

(i) Design and construction documents;
(ii) Construction administration;
(iii) Office management; and
(iv) Related special activities.

(c) The applicant must have passed the applicable National Council of Architectural Registration Board's examination;

(d) The applicant must have satisfied the board as to the applicant's good standing in the profession and his moral character. Any of the following acts shall preclude an applicant's eligibility as a candidate for registration:

(i) Conviction by any court for commission of any felony or any crime involving moral turpitude;

(ii) Conviction by any court of a misdemeanor involving fraud, deceit or misrepresentation;

(iii) Misstatement or misrepresentation of fact by the applicant in connection with the applicant's application for registration in this state or another jurisdiction;

(iv) Violation of any of the rules of conduct required of applicants or architects as adopted by board;

(v) Practicing architecture, or holding himself out as capable of practicing architecture, in this state in violation of the chapter.

The board may admit an applicant otherwise precluded from consideration because of the prohibitions imposed in this paragraph (d) if the board determines that the applicant has shown clear and convincing evidence of rehabilitation and reform. Such decision is in the sole discretion of the board and upon such terms, conditions and evidence as the board may require.

Additionally, notwithstanding the provisions of paragraph (b) of this subsection, if the applicant can provide sufficient and satisfactory evidence that he is unable to obtain the intern-architect development program certification, the board may accept in lieu thereof certification by the applicant that he has completed not less than three (3) continuous years of actual engagement in architectural work in the office or offices of a licensed architect or architects. Such certification shall be on such terms, conditions and requirements as the board may establish.

(2) The board may require that the applicant appear before the board for a personal interview.

SOURCES: Codes, 1930, § 3615; 1942, § 8632-07; Laws, 1928, ch. 133; Laws, 1954, ch. 320, § 7; Laws, 1976, ch. 363, § 3; reenacted and amended, Laws, 1983, ch. 377, § 7; Laws, 1985, ch. 337; Laws, 1988, ch. 578, § 4, eff from and after July 1, 1988.

Cross References — Qualifications required of architects residing outside this state, see § 73-1-21.

Annual certificate of renewal fees, see § 73-1-27.

The disciplinary procedures and penalties for a violation of this section, see § 73-1-29.

Regulation of landscape architects, see §§ 73-2-1 et seq.

RESEARCH REFERENCES

ALR. Grant or denial of license to practice architecture. 2 A.L.R.4th 1103.

§ 73-1-15. Filing notice of election of officers, rules and regulations.

The board shall immediately upon the election of each officer thereof, and upon adoption, repeal or modification of its rules of government or its rules and regulations for registration of applicants, file with the secretary of state, the name and postoffice address of each officer, and a copy of such rules and regulations or the amendments, repeal or modifications thereof.

SOURCES: Codes, 1930, § 3616; 1942, § 8632-08; Laws, 1928, ch. 133; Laws, 1954, ch. 320, § 8; reenacted without change, Laws, 1983, ch. 377, § 8, eff from and after July 1, 1983.

§ 73-1-17. Architect registration examination.

Applicants for registration by examination must pass the Architect Registration Examination as provided below. The board shall administer the Architect Registration Examination, as prepared by the National Council of Architectural Registration Boards, to all candidates who have been approved by the board in accordance with the training and educational requirements pertaining to registration by examination. The examination must be administered in compliance with those methods and procedures recommended by the National Council of Architectural Registration Boards and adopted by the board. Examinations will be administered by the board to approved candidates only.

An application for examination shall be made upon forms prescribed and furnished by the board. The board shall consider such application only if the applicant has met all training and educational requirements pertaining to registration by examination, has furnished a completed council record from the National Council of Architectural Registration Boards, and has supplied any additional evidence or information required by the board. Failure to supply such additional evidence or information within a specific time set by the board may be considered just and sufficient cause for denial of the application.

The Architect Registration Examination must be graded in accordance with the methods and procedures recommended by the National Council of Architectural Registration Boards. To achieve registration, an examination candidate shall pass all sections of the examination with the minimum score specified by the National Council of Architectural Registration Boards.

Once registration is granted an applicant, all examination materials held in the applicant's file shall be destroyed. The only information retained shall be the actual test results and the date of examination. The examination materials for unsuccessful candidates shall be held until such candidates have passed all sections of the Architect Registration Examination. If a candidate fails to take three (3) consecutive examinations, then the only information retained in such candidate's file shall be the actual scores of the attempted sections along with the dates such examinations were taken. All other material must be destroyed.

The board may adopt such other rules and regulations pertaining to the administration, grading, cost and fees of the examination as the board may deem proper.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Codes, 1930, § 3617; 1942, § 8632-09; Laws, 1928, ch. 133; Laws, 1954, ch. 320, § 9; Laws, 1976, ch. 363, § 4; reenacted and amended, Laws, 1983, ch. 377, § 9; Laws, 1988, ch. 578, § 5; Laws, 1997, ch. 588, § 23, eff from and after July 1, 1997.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Compensation of board from registration and other fees, see § 73-1-11.

Payment and deposit in state treasury of funds received by state board of architecture, see § 73-1-43.

RESEARCH REFERENCES

Am Jur. 5 Am. Jur. 2d, Architects §§ 3 to 5.

Practice References. The American Institute of Architects Legal Citator (Matthew Bender).

§ 73-1-19. Practice by copartnership of architects and engineers, professional corporation, or professional limited liability company; posting certificates; persons exempt from chapter.

In the case of a copartnership of architects, or architects and engineers, or a professional corporation, or professional limited liability company, either foreign or domestic, each active member or stockholder, and each officer, director or manager, must hold a certificate to practice architecture or engineering in that member's state of residence; and, in the case of a foreign corporation or professional limited liability company doing business in this state, at least one (1) active member or stockholder must hold a certificate to practice architecture in this state. No stock company, corporation, professional corporation or professional limited liability company shall be entitled to a certificate to practice architecture. No company other than a professional corporation or a professional limited liability company shall advertise or otherwise hold itself out to be an architect or to be authorized to practice architecture in this state.

Nothing in this chapter shall be construed as prohibiting a joint enterprise, partnership, professional corporation, professional limited liability company or association between one (1) or several registered professional engineers and/or duly registered architects; and it shall be lawful for such partnership, joint enterprise, professional corporation, professional limited liability company or association to use in its title the words architects and engineers or engineers and architects; provided, however, that all announcements, cards, stationery, printed matter and listings of such partnership, joint enterprise, professional corporation, professional limited liability company or association shall indicate as to each member whether he be a registered architect or a registered engineer; provided, further, that the name of such partnership, professional corporation, professional limited liability company or association shall contain the name of at least one (1) person who is registered as an architect in this state and that no such person be named on any announcement, card, stationery, printed matter or listing of such partnership, professional corporation, professional limited liability company or association used in this state unless there is designated thereon whether or not such person is licensed in this state. Employees of a firm who are not registered as architects, or engineers in the case of a joint enterprise, partnership, professional corporation, professional limited liability company or association between architects and engineers, may use business cards for that firm if the job title of such individual is clearly stated.

Each person holding a certificate to practice architecture in this state shall post such certificate in a prominent place in the architect's place of business. Failure to post the certificate shall be sufficient cause for revocation of such certificate.

The following persons and practices shall be exempted from the provisions of this chapter:

Draftsmen, students, clerks-of-work and other employees of those lawfully practicing as registered architects under the provisions of this chapter acting under the instruction, control or supervision of their employers.

SOURCES: Codes, 1930, § 3618; 1942, § 8632-10; Laws, 1928, ch. 133; Laws, 1930, ch. 117; Laws, 1954, ch. 320, § 10; Laws, 1968, ch. 508, § 1; Laws, 1976, ch. 363, § 5; Laws, 1981, ch. 367, § 1; reenacted, Laws, 1983, ch. 377, § 10; Laws, 1988, ch. 578, § 6; Laws, 1994, ch. 350, § 1; Laws, 2002, ch. 331, § 1, eff from and after July 1, 2002.

Cross References — Penalty for practicing without certificate, see § 73-1-25.

Disciplinary procedures and penalties for a violation of this section, see § 73-1-29.

Reissuance of certificates, see § 73-1-33.

Regulation of practice of engineering, see §§ 73-13-1 et seq.

Engineering corporations or partnerships, see § 73-13-43.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 8632-10] operates to exempt a registered architect from also registering as an engineer where the work of the two professions overlaps. State Bd. of Registration for Professional Eng'rs v. Rogers, 239 Miss. 35, 120 So. 2d 772 (1960), error overruled, 239 Miss. 44, 121 So. 2d 720 (1960).

One not registered as a professional engineer does not illegally engage in the practice of engineering by calling himself a "mechanical designer" and preparing plans for heating, ventilation, air conditioning and plumbing for buildings under instructions from supervising architects or engineers. State Bd. of Registration for Professional Eng'rs v. Rogers, 239 Miss. 35, 120 So. 2d 772 (1960), error overruled, 239 Miss. 44, 121 So. 2d 720 (1960).

ATTORNEY GENERAL OPINIONS

A limited liability partnership may transact any architectural business in Mississippi. Kilpartick, Jr., Mar. 9, 2001, A.G. Op. #01-0089.

RESEARCH REFERENCES

ALR. Validity and application of statute prohibiting use of name descriptive of engineering by business organization not practicing profession of engineering. 13 A.L.R.4th 676.

Am Jur. 5 Am. Jur. 2d, Architects § 4.

2 Am. Jur. Pl & Pr Forms (Rev), Architects, Forms 3, 4.

CJS. 6 C.J.S., Architects § 3.

Practice References. The American Institute of Architects Legal Citator (Matthew Bender).

§ 73-1-21. Qualifications required of architects residing outside this state.

Any architect residing outside this state may obtain a certificate to practice in the State of Mississippi by complying with Section 73-1-13, and by paying the fees prescribed by the rules of the board; however, no such nonresident applicant shall receive a certificate to practice in this state unless the applicant furnishes evidence satisfactory to the board that the applicant holds a current and valid registration issued by a registration authority recognized by the board, holds a National Council of Architectural Registration Board's certificate, has never been restrained from practicing architecture, and has never had a certificate or license revoked. Each nonresident applicant shall submit, as a part of the application, a sworn affidavit stating that neither such applicant nor any person in, or agent of, the applicant's firm has practiced or is practicing architectural work in this state prior to the applicant having been licensed by the board unless such person or agent holds a license to practice architecture in this state. Failure to submit this affidavit is just cause for disapproval of the application. Every applicant for reciprocity registration shall comply fully with the requirements for resident applicants, except that nonresident applicants who met the requirements for issuance of a certificate of registration by the board prior to January 1, 1987, and who, on that date, held a current and valid registration by a registration authority recognized by the board or were qualified exam candidates in another jurisdiction recognized by the board, shall not be required to meet the degree requirements of Section 73-1-13. The board shall have the further right to exercise its discretion as to whether such nonresident architect shall be issued such certificate to practice.

The issuance of a certificate by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Codes, 1930, § 3620; 1942, § 8632-11; Laws, 1928, ch. 133; Laws, 1954, ch. 320, § 11; Laws, 1976, ch. 363, § 6; reenacted, Laws, 1983, ch. 377, § 11; Laws, 1988, ch. 578, § 7; Laws, 2000, ch. 472, § 1; Laws, 2010, ch. 361, § 1; Laws, 2013, ch. 350, § 4, eff from and after July 1, 2013.

Cross References — Penalty for practicing without certificate, see § 73-1-25.

Disciplinary procedures and penalties for a violation of this section, see § 73-1-29.

Payment and deposit in state treasury of funds received by state board of architecture, see § 73-1-43.

RESEARCH REFERENCES

ALR. Right of architect or engineer licensed in one state to recover compensation for services rendered in another state, or in connection with construction in another state, where he was not licensed in the latter state. 32 A.L.R.3d 1151.

§ 73-1-23. Temporary licenses not to be issued.

No temporary license to practice shall be issued by the board, except as authorized under Section 73-50-1.

SOURCES: Codes, 1942, § 8632-12; Laws, 1954, ch. 320, § 11; Laws, 1976, ch. 363, § 7; reenacted, Laws, 1983, ch. 377, § 12; Laws, 2013, ch. 350, § 5, eff from and after July 1, 2013.

Cross References — Disciplinary procedures and penalties for a violation of this section, see § 73-1-29.

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. Pl & Pr Forms (Rev), Architects, Forms 1 et seq.

§ 73-1-25. Penalty for practicing without certificate; injunctive relief.

(a) It is unlawful and it is a misdemeanor punishable by a fine of not exceeding One Thousand Dollars ($1,000.00) or by imprisonment of not exceeding ninety (90) days, or both, for a person to practice architecture, as defined in this chapter, without current certificate in this state, or to advertise or put out any sign or card or other device which might indicate to the public that the person is entitled to practice as an architect.

(b) If any person, firm or corporation violates any of the provisions of this chapter, the secretary of the board shall, upon direction of a majority of the board, in the name of the State of Mississippi, acting through an attorney employed by the board, apply in any chancery court of competent jurisdiction for an order enjoining such violation or for an order enforcing compliance with the provisions of this chapter. Upon the filing of a verified petition in the proper court, such court or any judge thereof, if satisfied by the sworn petition, by affidavit or otherwise, that such person has violated this chapter, may issue a temporary injunction on five (5) days' notice to the defendant enjoining such continued violation, and such injunction shall remain in force and effect until a final hearing. If at such hearing it is established that such person has violated, or is violating this chapter, the court may enter a decree permanently enjoining such violation or enforcing compliance with this chapter and awarding all cost and expenses, including reasonable attorney's fees, to the board. In case of violation of any decree issued in compliance with this subsection, the court may try and punish the offender for contempt of court and shall fine the offender a sum of not less than Two Hundred Fifty Dollars ($250.00) per offense. Each day of the violation is a separate offense, and the court shall proceed as in other cases in chancery.

(c) The proceedings in this section shall be in addition to and not in lieu of the other remedies and penalties provided in this chapter.

SOURCES: Codes, 1930, § 3621; 1942, § 8632-13; Laws, 1928, ch. 133; Laws, 1954, ch. 320, § 13; Laws, 1976, ch. 363, § 8; reenacted, Laws, 1983, ch. 377, § 13; Laws, 1988, ch. 578, § 8; Laws, 2011, ch. 387, § 1, eff from and after July 1, 2011.

Cross References — Disciplinary procedures and penalties for a violation of this section, see § 73-1-29.

Appeals from action of board, see § 73-1-31.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Recovery back of money paid to unlicensed person required by law to have occupation or business license or permit to make contract. 74 A.L.R.3d 637.

Am Jur. 5 Am. Jur. 2d, Architects § 5.

§ 73-1-27. Annual certificate of renewal.

Except as provided in Section 33-1-39, every registered architect who resides in this state and desires to continue to practice his profession in this state shall, during the time he shall continue to practice, pay biennially to the secretary of said board during the month of November, a fee not to exceed Four Hundred Dollars ($400.00) and every registered architect residing out of this state who desires to continue to practice his profession in this state shall, during the time he shall continue to practice, pay biennially to the secretary of said board during the month of November, a fee not to exceed Four Hundred Dollars ($400.00), and the secretary shall thereupon issue to such registered architect a certificate of renewal of his registration for a term of two (2) years. Upon failure to have his certificate renewed during the month of November as provided by this section, the holder thereof shall have his certificate revoked, but the failure to renew said registration in ample time shall not deprive him of the right to renewal upon payment of said fee, provided his application for reinstatement is made within two (2) years after the expiration of his certificate. On all applications for reinstatement made after January 1 of the year immediately succeeding the year in which the fee is due, there shall be a late charge of Five Dollars ($5.00) per month charged for the processing of such application.

SOURCES: Codes, 1930, § 3622; 1942, § 8632-14; Laws, 1928, ch. 133; Laws, 1954, ch. 320, § 14; Laws, 1964, ch. 489; Laws, 1976, ch. 363, § 9; reenacted and amended, Laws, 1983, ch. 377, § 14; Laws, 1994, ch. 350, § 2; Laws, 2007, ch. 309, § 2, eff from and after passage (approved Mar. 8, 2007.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in the first sentence. The word "of" was deleted in two places so that "pay ... a fee of not to exceed" reads "pay ... a fee not to exceed." The Joint Committee ratified the correction at its August 5, 2008 meeting.

Cross References — Compensation of board from registration and other fees, see § 73-1-11.

Disciplinary procedures and penalties for a violation of this section, see § 73-1-29.

Payment and deposit in state treasury of funds received by state board of architecture, see § 73-1-43.

§ 73-1-29. Disciplinary procedures; penalties and costs; reissuance of certificate.

(1) The board, upon satisfactory proof and in accordance with this chapter and the regulations of the board, is authorized to take the disciplinary actions provided for hereinafter against any person for any of the following reasons:

(a) Violating any of the provisions of Sections 73-1-1 through 73-1-43 or the bylaws, rules, regulations or standards of ethics or conduct duly adopted by the board pertaining to the practice of architecture;

(b) Obtaining a certificate of registration by fraud, deceit or misrepresentation;

(c) Gross negligence, malpractice, incompetency or misconduct in the practice of architecture;

(d) Any professional misconduct, as defined by the board through bylaws, rules and regulations, and standards of conduct and ethics; (professional misconduct may not be defined to include bidding by architects for contracts based on price);

(e) Practicing or offering to practice architecture on an expired certificate or while under suspension or revocation of certificate unless such suspension or revocation is abated through probation, as provided for hereinafter;

(f) Practicing architecture under an assumed or fictitious name;

(g) Being convicted by any court of a felony, except conviction of culpable negligent manslaughter, in which case the record of conviction shall be conclusive evidence;

(h) Willfully misleading or defrauding any person employing him as an architect by any artifice or false statement; or

(i) Having undisclosed financial or personal interests which compromise his obligation to his client.

(2) Any person may prefer charges against any other person for committing any of the acts set forth in subsection (1). Such charges need not be sworn to, may be made upon actual knowledge or upon information and belief, and must be filed with the board. If any person licensed under Sections 73-1-1 through 73-1-43 is expelled from membership in any Mississippi or national professional architectural society or association, the board shall thereafter cite such person to appear at a hearing before the board to show cause why disciplinary action should not be taken against that person.

The board shall investigate all charges filed with it and, upon finding reasonable cause to believe that the charges are not frivolous, unfounded or filed in bad faith, may cause a hearing to be held, at a time and place fixed by the board, regarding the charges and may compel the accused by subpoena to appear before the board to respond to the charges.

No disciplinary action may be taken until the accused has been furnished both a statement of the charges against him and notice of the time and place of the hearing thereof, which shall be personally served on the accused or mailed by registered or certified mail, return receipt requested, to the last known business or residence address of the accused not less than thirty (30) days prior to the date of the hearing.

(3) At any hearing held hereunder, the board, upon application and approval of the chancery court, shall have the power to subpoena witnesses and compel their attendance and may also require the production of books, papers and other documents, as provided in this chapter. The hearing shall be conducted before the full board with the president of the board serving as the presiding judge. Counsel for the board shall present all evidence relating to the charges. All evidence shall be presented under oath, which may be administered by any member of the board, and thereafter the proceedings may, if necessary, be transcribed in full by the court reporter and filed as part of the record in the case. Copies of such transcriptions may be provided to any party to the proceedings at a cost fixed by the board.

All witnesses who are subpoenaed and who appear in any proceedings before the board shall receive the same fees and mileage as allowed by law in judicial civil proceedings, and all such fees shall be taxed as part of the costs in the case.

If in any proceeding before the board any witness fails or refuses to attend upon subpoena issued by the board, refuses to testify, or refuses to produce any books and papers the production of which is called for by the subpoena, the attendance of such witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

The accused shall have the right to be present at the hearing in person, by counsel or other representative, or both. The accused shall have the right to present evidence and to examine and cross-examine all witnesses. The board may continue or recess the hearing as may be necessary.

(4) At the conclusion of the hearing, the board may either decide the issue at that time or take the case under advisement for further deliberation. The

board shall render its decision not more than forty-five (45) days after the close of the hearing and shall forward to the last known business or residence address of the accused by certified or registered mail, return receipt requested, a written statement of the decision of the board.

If a majority of the board finds the accused guilty of the charges filed, the board may:

(a) Issue a public or private reprimand;

(b) Suspend or revoke the certificate of the accused, if the accused is a registrant; or

(c) In lieu of or in addition to such reprimand, suspension or revocation, assess and levy upon the guilty party a monetary penalty of not less than One Hundred Dollars ($100.00) nor more than Five Thousand Dollars ($5,000.00) for each violation.

(5) A monetary penalty assessed and levied under this section shall be paid to the board upon the expiration of the period allowed for appeal of such penalties under this section, or may be paid sooner if the guilty party elects. Money collected by the board under this section shall be deposited to the credit of the special fund created in Section 73-1-43, Mississippi Code of 1972.

When payment of such monetary penalty assessed and levied by the board is delinquent, the board shall have the power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county of residence of the guilty party. If the guilty party is a nonresident of the State of Mississippi, such proceedings shall be in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(6) When the board has taken a disciplinary action under this section, the board may stay such action and place the guilty party on probation for a period not to exceed one (1) year upon condition that the guilty party shall not further violate either the laws of the State of Mississippi pertaining to the practice of architecture or the bylaws, rules and regulations, or standards of conduct and ethics promulgated by the board.

(7) The board may assess and tax any part or all of the costs of any disciplinary proceedings conducted under this section against the accused if the accused is found guilty of the charges.

(8) The power and authority of the board to assess and levy the monetary penalties provided for in this section shall not be affected or diminished by any other proceeding, civil or criminal, concerning the same violation or violations except as provided in this section.

(9) The board, for sufficient cause, may reissue a revoked certificate of registration by a majority vote of the board members; but in no event shall a revoked certificate be issued within two (2) years of the revocation. A new certificate of registration required to replace a revoked, lost, mutilated or destroyed certificate may be issued, subject to the rules of the board, for a charge not to exceed Ten Dollars ($10.00).

(10) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the certificate of registration of any person for being out of compliance with an order for support, as defined in

Section 93-11-153. The procedure for suspension of a certificate for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a certificate suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a certificate suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Codes, 1930, § 3623; 1942, § 8632-15; Laws, 1928, ch. 133; Laws, 1954, ch. 320, § 15; Laws, 1976, ch. 363, § 10; Laws, 1981, ch. 367, § 2; reenacted, Laws, 1983, ch. 377, § 15; Laws, 1988, ch. 578, § 9; Laws, 1996, ch. 507, § 19, eff from and after July 1, 1996.

Cross References — Revocation of certificate for failure to display certificate in a prominent place in architect's place of business, see § 73-1-19.

Penalty for practicing without certificate, see § 73-1-25.

Authority of the board to reissue a certificate of registration to any person whose certificate has been suspended or revoked, upon the vote of at least three members, see § 73-1-33.

Suspension of state issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 et seq.

RESEARCH REFERENCES

ALR. Responsibility of one acting as architect for defects or insufficiency of work attributable to plans. 25 A.L.R.2d 1085.

Revocation or suspension of license to practice architecture. 58 A.L.R.3d 543.

Am Jur. 5 Am. Jur. 2d, Architects § 5.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

2 Am. Jur. Pl & Pr Forms (Rev), Architects, Forms 31 et seq.

14 Am. Jur. Pl & Pr Forms (Rev), (complaint for injunction to enjoin suspension or revocation of license arising from performance of judgment for services for which licensee was required was discharged in bankruptcy).

26 Am. Jur. Proof of Facts 2d 325, Architect's Negligence.

CJS. 6 C.J.S., Architects § 13.

§ 73-1-31. Appeal of order, judgment or action of board.

Within thirty (30) days after entry of a final order or judgment denying or revoking a certificate to practice architecture, whether an initial licensure or renewal, or action of the board as a result of disciplinary proceedings conducted under this section, any person aggrieved thereby may appeal such order, judgment or action either to the chancery court of the county wherein the appellant resides or to the Chancery Court of the First Judicial District of Hinds County, Mississippi, upon giving bond with sufficient security in the amount of Five Hundred Dollars ($500.00), approved by the clerk of the chancery court and conditioned to pay any costs which may be adjudged against such person. If the appellant is a nonresident of this state, the appeal shall be made to the Chancery Court of the First Judicial District of Hinds County, Mississippi.

Notice of appeal shall be filed in the office of the clerk of the chancery court, who shall issue a writ of certiorari directed to the board commanding it within ten (10) days after service thereof to certify to such court its entire record in the matter in which the appeal has been taken. The content of the briefs shall be in accordance with M.R.A.P. 28 and the briefing schedule shall be in accordance with M.R.A.P. 31 unless the court, in its discretion, directs otherwise. The appeal shall thereupon be heard in due course by the court, and the court shall review the record and make its determination of the cause between the parties within sixty (60) days of the close of briefing.

Any order, judgment or decision of the board shall not take effect until after the time for appeal to the court shall have expired. All appeals perfected hereunder shall act as a supersedeas of the order, judgment or action appealed from.

Actions taken by the board in suspending a certificate of registration when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a suspension of a certificate that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SOURCES: Codes, 1930, § 3623; 1942, § 8632-15; Laws, 1928, ch. 133; Laws, 1954, ch. 320, § 15; Laws, 1976, ch. 363, § 11; reenacted, Laws, 1983, ch. 377, § 16; Laws, 1988, ch. 578, § 10; Laws, 1996, ch. 507, § 20; Laws, 2015, ch. 370, § 1, eff from and after passage (approved Mar. 17, 2015.)

Cross References — Suspension of state issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

§ 73-1-33. Reissuance of certificates.

The board, for reasons it may deem sufficient, may reissue a certificate of registration to any person whose certificate has been suspended or revoked, providing three (3) or more members of the board vote in favor of such reissuance. The procedure for the reissuance of a certificate that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

SOURCES: Codes, 1942, § 8632-16; Laws, 1954, ch. 320, § 16; reenacted, 1983, Laws, ch. 377, § 17; Laws, 1988, ch. 578, § 11; Laws, 1996, ch. 507, § 21, eff from and after July 1, 1996.

Cross References — Revocation of certificate for failure to display certificate in a prominent place in architect's place of business, see § 73-1-19.

Provision authorizing the board to reissue a revoked certificate of registration by a majority vote of the board, but not within two years of the revocation, see § 73-1-29.

Payment and deposit in state treasury of funds received by state board of architecture, see § 73-1-43.

§ 73-1-35. Architects to have seal or stamp.

Each architect, upon registration, shall obtain a seal or stamp of the design authorized by the board as set forth in the rules and regulations of the board.

No architect shall affix his seal or stamp to any document which has not been prepared under his or her responsible control.

The signature of the architect and date of execution shall appear over the seal or stamp on all documents prepared by the architect for use in this state.

SOURCES: Codes, 1930, § 3624; 1942, § 8632-17; Laws, 1928, ch. 133; Laws, 1954, ch. 320, § 17; reenacted without change, Laws, 1983, ch. 377, § 18; Laws, 1988, ch. 578, § 12; Laws, 1994, ch. 350, § 3; Laws, 2002, ch. 331, § 2, eff from and after July 1, 2002.

Cross References — Disciplinary procedures and penalties for a violation of this section, see § 73-1-29.

JUDICIAL DECISIONS

1. In general.

In an action by a general contractor against an architect alleging negligence in preparing a drainage plan for a construction site, the absence of the architect's professional seal on the drainage plan did not operate to relieve the architect from liability for defects in the drainage plan. Owen v. Dodd, 431 F. Supp. 1239 (N.D. Miss. 1977).

§ 73-1-37. Annual report by board.

Within the second week of January annually, the secretary of the board shall make to the governor of the state a complete statement of the receipts and expenditures of said board, attested by affidavit of the president and secretary, and a complete report of the transactions of the board with such recommendations for the advancement and betterment of the profession as it may think best.

SOURCES: Codes, 1930, § 3625; 1942, § 8632-18; Laws, 1928, ch. 133; Laws, 1954, ch. 320, § 18; Laws, 1976, ch. 363, § 12; reenacted, Laws, 1983, ch. 377, § 19, eff from and after July 1, 1983.

Cross References — Payment and deposit in state treasury of funds received by state board of architecture, see § 73-1-43.

§ 73-1-39. Saving clause; excepted occupations and activities.

A certificate of registration as registered architect, heretofore duly issued under the laws of this state, shall serve the same purpose as, and is hereby declared to be the license required by this chapter.

This chapter shall not apply to:

(a) The practice of architecture solely as an officer or employee of the United States, but persons so engaged or employed shall not engage in the private practice of architecture in this state without first having a registration certificate as herein provided;

(b) Any person, firm or corporation that prepares plans and specifications for the erection of any buildings owned by the State of Mississippi, or any of its political subdivisions, containing less than ten thousand (10,000) square feet of ground floor area, and not exceeding two (2) stories in height; or any person, firm or corporation that supervises the erection of any such buildings; or to any person, firm or corporation that prepares plans and specifications for, or that supervises repairs, alterations or additions to such existing buildings; provided further that such person, firm or corporation does not in any manner represent himself or itself to be an architect, architectural designer, or employ some other title of profession or business using some form of the word architect;

(c) Contractors, superintendents, inspectors, foremen or building trades craftsmen while performing their customary duties;

(d) Professional engineers licensed by the Mississippi State Board of Registration for Professional Engineers and Land Surveyors practicing in compliance with the laws of this state;

(e) Professional landscape architects who are engaged in the preparation of drawings for and the supervision of planting, grading, walks, paving and appurtenances related to such work;

(f) City and regional planners or professional planners while advising, consulting, administering or performing professional work or planning services;

(g) Golf course architects who are engaged in the preparation of drawings and specifications and responsible supervision, including related consultation, investigation, reconnaissance, research and design, where the dominant purpose of such services is the design of a golf course, in accordance with accepted professional standards of public health and safety;

(h) Any person who prepares plans and specifications for, or supervises the erection, enlargement or alteration of:

(i) Any building on any farm for the use by any farmer;

(ii) Any one-family or two-family residence buildings, regardless of cost;

(iii) Any domestic outbuilding appurtenant to any one-family or two-family residence, regardless of cost; or

(iv) Any other type building which contains less than five thousand (5,000) square feet and is less than three (3) stories in height.

SOURCES: Codes, 1942, § 8632-19; Laws, 1954, ch. 320, § 19; Laws, 1976, ch. 363, § 13; reenacted, Laws, 1983, ch. 377, § 20; Laws, 1994, ch. 558, § 22; Laws, 2002, ch. 331, § 3, eff from and after July 1, 2002.

Editor's Note — Laws of 1994, ch. 558, § 24, provides as follows:

"SECTION 24. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Regulation of landscape architectural practice, see §§ 73-2-1 et seq.

Regulation of practice of engineering, see §§ 73-13-1 et seq.

JUDICIAL DECISIONS

1. In general.

In an action by a general contractor against an architect alleging negligence in preparing a drainage plan for a construction site, the absence of the architect's professional seal on the drainage plan did not operate to relieve the architect from liability for defects in the drainage plan. Owen v. Dodd, 431 F. Supp. 1239 (N.D. Miss. 1977).

ATTORNEY GENERAL OPINIONS

This section and § 73-13-45 should be read and applied together. Section 73-1-39 encompasses exceptions to licensure that involve public building size, while § 73-13-45 encompasses exceptions to licensure that involve public work cost, which work reasonably includes construction of public buildings owned by the state. Adams. Jan. 21, 2004, A.G. Op. 03-0637.

RESEARCH REFERENCES

Am Jur. 5 Am. Jur. 2d, Architects §§ 3 et seq.

§ 73-1-41. Venue.

The venue of action against the state board of architecture wherein said board is a defendant shall be in Hinds County.

SOURCES: Codes, 1942, § 8632-21; Laws, 1954, ch. 320, § 21; reenacted without change, Laws, 1983, ch. 377, § 21, eff from and after July 1, 1983.

Cross References — Venue of actions generally, see §§ 11-11-1 et seq.

§ 73-1-43. Payment and deposit in state treasury of funds received by state board of architecture.

All fees from examinations and licenses by the state board of architecture, as established by Section 73-1-3 et seq., and any other funds received by said board shall be paid to the state treasurer, who shall issue receipts therefor and who shall deposit such funds in the state treasury in a special fund to the credit of said board. All such funds shall be expended only pursuant to appropriation approved by the legislature and as provided by law.

SOURCES: Laws, 1973, ch. 381, § 7; reenacted, Laws, 1983, ch. 377, § 22; Laws, 1984, ch. 488, § 275, eff from and after July 1, 1984.

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Cross References — Direction that money collected by the board under its disciplinary procedures be deposited to the credit of the special fund created in this section, see § 73-1-29.

§ 73-1-45. Repealed.

Repealed by Laws of 1988, ch. 578, § 13, eff from and after July 1, 1988.

[En Laws, 1979, ch. 301, § 18; Laws, 1979, ch 357, § 4; Laws, 1983, ch. 377, § 23]

Editor's Note — Former § 73-1-45 provided for the repeal of §§ 73-1-1 through 73-1-43.

CHAPTER 2

Landscape Architectural Practice

SEC.
73-2-1. Title.
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§ 73-2-1. Title.

This chapter shall be known and may be cited as the "Landscape Architectural Practice Law."

SOURCES: Laws, 1973, ch. 471, § 1; reenacted, Laws, 1983, ch. 348, § 1; reenacted, Laws, 1988, ch. 517, § 1; reenacted without change, Laws, 1991, ch. 318, § 1; reenacted without change, Laws, 1999, ch. 371, § 1; reenacted without change, Laws, 2001, ch. 406, § 1; reenacted without change, Laws, 2005, ch. 361, § 1, eff from and after July 1, 2005.

Editor's Note — Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, contained a repealer for §§ 73-2-1 through 73-2-23, effective July 1, 2005. The repealer was deleted from Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, by Laws of 2005, ch. 361, § 14, effective from and after July 1, 2005.

RESEARCH REFERENCES

Practice References. The American Institute of Architects Legal Citator (Matthew Bender).

§ 73-2-3. Definitions.

As used in this chapter:

(a) "Landscape architect" means a person who is licensed to practice landscape architecture in this state under the authority of this chapter and is engaging in the practice of landscape architecture within the meaning and intent of this chapter when he performs or holds himself out as capable of performing any of the services or creative works within the definition of landscape architecture.

(b) "Landscape architecture" means any service or creative work, the adequate performance of which requires landscape architectural education, training and experience; the performance of professional services such as consultation, investigation, research, associated planning, design, preparation of drawings, specifications and contract documents, and responsible supervision or construction management in connection with the development of land areas where, and to the extent that, dominant purpose of such services is the preservation, enhancement or determination of proper land uses, natural land features, ground cover and plantings, naturalistic and aesthetic values; the determination of settings, grounds and approaches for buildings and structures or other improvements; the determination of environmental problems of land relating to erosion, flooding, blight and other hazards; the shaping and contouring of land and water forms; the setting of grades, determination of drainage and providing for storm drainage systems where such systems do not require structural design of system components, and determination of landscape irrigation; the design of such tangible objects and features as are necessary to the purpose outlined herein, but shall not include the design of buildings or structures with separate and self-contained purposes such as are ordinarily included in the practice of architecture or engineering.

(c) "Board" means the Mississippi State Board of Architecture as established by Section 73-1-3 et seq.

(d) "License" means a certificate granted by the Mississippi State Board of Architecture authorizing its holder to practice landscape architecture.

(e) "Mississippi chapter" means the Mississippi Chapter of the American Society of Landscape Architects.

SOURCES: Laws, 1973, ch. 471, § 2; reenacted, Laws, 1983, ch. 348, § 2; reenacted and amended, Laws, 1988, ch. 517, § 2; reenacted without change, Laws, 1991, ch. 318, § 2; reenacted without change, Laws, 1999, ch. 371, § 2; reenacted and amended, Laws, 2001, ch. 406, § 2; reenacted without change, Laws, 2005, ch. 361, § 2, eff from and after July 1, 2005.

Editor's Note — Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, contained a repealer for §§ 73-2-1 through 73-2-23, effective July 1, 2005. The repealer was deleted from Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, by Laws of 2005, ch. 361, § 14, effective from and after July 1, 2005.

RESEARCH REFERENCES

Practice References. The American Institute of Architects Legal Citator (Matthew Bender).

§ 73-2-5. License required.

No person shall practice landscape architecture in this state or use the title "landscape architect" on any sign, title, card or device to indicate that such person is practicing landscape architecture or is a landscape architect, unless such person shall have secured from the board a license as landscape architect in the manner hereinafter provided, and shall thereafter comply with the provisions of this chapter. Every holder of a current license shall display it in a conspicuous place in his principal office or place of employment.

SOURCES: Laws, 1973, ch. 471, § 3; reenacted, Laws, 1983, ch. 348, § 3; reenacted, Laws, 1988, ch. 517, § 3; reenacted without change, Laws, 1991, ch. 318, § 3; reenacted without change, Laws, 1999, ch. 371, § 3; reenacted and amended, Laws, 2001, ch. 406, § 3; reenacted without change, Laws, 2005, ch. 361, § 3, eff from and after July 1, 2005.

Editor's Note — Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, contained a repealer for §§ 73-2-1 through 73-2-23, effective July 1, 2005. The repealer was deleted from Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, by Laws of 2005, ch. 361, § 14, effective from and after July 1, 2005.

Cross References — Regulation of architects, see §§ 73-1-1 et seq.

Disciplinary proceedings, see § 73-2-16.

Injunctions to restrain illegal practice of profession, see § 73-51-1.

RESEARCH REFERENCES

Practice References. The American Institute of Architects Legal Citator (Matthew Bender).

§ 73-2-7. Qualifications of applicant.

In order to qualify for a license as a landscape architect, an applicant must:

(a) Submit evidence of his good moral character and integrity to the examining board.

(b) Have received a degree in landscape architecture from a college or university having a minimum four-year curriculum in landscape architecture approved by the board or have completed seven (7) years of work in the practice of landscape architecture of a grade and character suitable to the board. Graduation in a curriculum other than landscape architecture from a college or university shall be equivalent to two (2) years' experience of the seven (7) specified above in this section, except that no applicant shall receive credit for more than two (2) years' experience for any scholastic training.

(c) Pass such written examination as required in Section 73-2-9.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Laws, 1973, ch. 471, § 4; reenacted, Laws, 1983, ch. 348, § 4; reenacted and amended, Laws, 1988, ch. 517, § 4; reenacted without change, Laws, 1991, ch. 318, § 4; Laws, 1994, ch. 424, § 1; reenacted without change, Laws, 1996, ch. 451, § 1; Laws, 1997, ch. 588, § 24; reenacted without change, Laws, 1999, ch. 371, § 4; reenacted without change, Laws,

2001, ch. 406, § 4; reenacted without change, Laws, 2005, ch. 361, § 4, eff from and after July 1, 2005.

Editor's Note — Laws of 1996, ch. 451, § 7, amended Laws of 1994, ch. 424, § 6, to remove the language providing for the repeal of the amendment by that act effective July 1, 1996.

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, contained a repealer for §§ 73-2-1 through 73-2-23, effective July 1, 2005. The repealer was deleted from Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, by Laws of 2005, ch. 361, § 14, effective from and after July 1, 2005.

Cross References — Applicability of this section to membership on the advisory committee, see § 73-2-13.

Disciplinary proceedings, see § 73-2-16.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

CJS. 53 C.J.S., Licenses §§ 58, 59 et seq.

Practice References. The American Institute of Architects Legal Citator (Matthew Bender).

§ 73-2-9. Examination of applicant.

Examinations for the license shall be held by the board annually. The board shall adopt rules and regulations covering the subjects and scope of the examinations, publish appropriate announcements, and conduct the examinations at the times designated. Except as otherwise provided in this chapter, every applicant shall be required, in addition to all other requirements, to take and pass a written examination. Each written examination may be supplemented by such oral examinations as the board shall determine.

SOURCES: Laws, 1973, ch. 471, § 5; reenacted, Laws, 1983, ch. 348, § 5; reenacted, Laws, 1988, ch. 517, § 5; reenacted without change, Laws, 1991, ch. 318, § 5; reenacted without change, Laws, 1999, ch. 371, § 5; reenacted without change, Laws, 2001, ch. 406, § 5; reenacted without change, Laws, 2005, ch. 361, § 5, eff from and after July 1, 2005.

Editor's Note — Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, contained a repealer for §§ 73-2-1 through 73-2-23, effective July 1, 2005. The repealer was deleted from Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, by Laws of 2005, ch. 361, § 14, effective from and after July 1, 2005.

Cross References — Additional qualifications of landscape architect, see § 73-2-7.

Disciplinary proceedings, see § 73-2-16.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses § 63.

Practice References. The American Institute of Architects Legal Citator (Matthew Bender).

§ 73-2-11. Exemptions from examination.

The board may exempt from examination any applicant who holds a license or certificate to practice landscape architecture issued to him upon examination by a legally constituted board of examiners of any other state or Washington, D.C., or any other territory or possession under the control of the United States, provided that such requirements of the state in which the applicant is registered are equivalent to those of this state.

Each nonresident applicant shall submit, as part of the application, a sworn affidavit stating that neither such applicant nor any person in or agent of the applicant's firm has practiced or is practicing landscape architectural work in this state prior to the applicant having been licensed by the board unless such person or agent holds a license to practice landscape architecture in this state. Failure to submit this affidavit or submitting an affidavit which is false in any respect shall constitute just cause for denial of the application.

An applicant who is a licensed landscape architect but who was admitted in a jurisdiction which did not offer a written examination acceptable to the board or was admitted without the requirement of passing a written examination may be issued a license to practice landscape architecture in this state upon the taking and passing of any examination or procedure as may be adopted by the board, provided that such applicant meets all other requirements for issuance of a license to practice landscape architecture in this state.

The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 1973, ch. 471, § 6; reenacted, Laws, 1983, ch. 348, § 6; reenacted and amended, Laws, 1988, ch. 517, § 6; reenacted without change, Laws, 1991, ch. 318, § 6; reenacted without change, Laws, 1999, ch. 371, § 6; reenacted and amended, Laws, 2001, ch. 406, § 6; reenacted without change, Laws, 2005, ch. 361, § 6; Laws, 2013, ch. 350, § 6, eff from and after July 1, 2013.

Editor's Note — Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, contained a repealer for §§ 73-2-1 through 73-2-23, effective July 1, 2005. The repealer was deleted from Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, by Laws of 2005, ch. 361, § 14, effective from and after July 1, 2005.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 24 et seq.

CJS. 53 C.J.S., Licenses §§ 56, 57.

Practice References. The American Institute of Architects Legal Citator (Matthew Bender).

§ 73-2-13. Advisory committee.

There shall be an advisory committee to the board to consist of five (5) members appointed by the Governor from a list of names supplied by Mississippi Chapter of the American Society of Landscape Architects, giving the names of no fewer than three (3) times the number of persons to be appointed. Each member of the initially appointed committee shall be qualified as described by Section 73-2-7. Appointments shall be licensed landscape architects only and shall be for five-year terms. Each member shall hold office until the appointment and qualification of his successor. Vacancies occurring prior to the expiration of the term shall be filled by appointment in like manner for the unexpired term.

The committee shall review, approve or disapprove, and make recommendations on all applications for landscape architect's license. At the direction of the board, the committee shall also review and investigate any charges brought against any landscape architect as provided for in Section 73-2-16 and make findings of fact and recommendations to the board concerning any disciplinary action which the committee deems necessary and proper pursuant to Section 73-2-16.

Each member of the committee shall be entitled to receive a per diem in such amounts as shall be set by the board, but not to exceed the amount provided for in Section 25-3-69, and shall be reimbursed for expenses that are incurred in the actual performance of his duties under the provisions of Section 25-3-41.

Before entering upon the discharge of his duties, each member of the committee shall take and subscribe to the oath of office and file it with the Secretary of State. The committee shall elect at the first meeting of every calendar year from among its members, a chairman and a secretary to hold office for one (1) year.

SOURCES: Laws, 1973, ch. 471, § 7; reenacted, Laws, 1983, ch. 348, § 7; reenacted and amended, Laws, 1988, ch. 517, § 7; reenacted without change, Laws, 1991, ch. 318, § 7; Laws, 1994, ch. 424, § 2; reenacted without change, Laws, 1996, ch. 451, § 2; reenacted without change, Laws, 1999, ch. 371, § 7; reenacted without change, Laws, 2001, ch. 406, § 7, eff from and after July 1, 2001; reenacted without change, Laws, 2005, ch. 361, § 7, eff from and after July 1, 2005.

Editor's Note — Laws of 1996, ch. 451, § 7, amended Laws of 1994, ch. 424, § 6, to remove the language providing for the repeal of the amendment by that act effective July 1, 1996.

Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, contained a repealer for §§ 73-2-1 through 73-2-23, effective July 1, 2005. The repealer was deleted from Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, by Laws of 2005, ch. 361, § 14, effective from and after July 1, 2005.

Cross References — Constitutional provision setting forth oath of office, see Miss Const Art. 14, § 268.

§ 73-2-15. License fees; seal.

Except as provided in Section 33-1-39, the board shall require that every landscape architect shall pay a biennial license renewal fee set by the board not in excess of Two Hundred Dollars ($200.00). The renewal fee shall be due and payable on the first day of January of each year in which the fee is required to be paid and shall become delinquent after the thirty-first day of January of such year, and if the renewal fee is not paid before it becomes delinquent, a penalty fee of Five Dollars ($5.00) shall be added to the amount thereof per month. If the renewal fee and penalty are not paid before the first day of June in the year in which they become due, the landscape architect's certificate shall be suspended. The certificate may be reinstated upon the payment of the renewal fee, the penalty fees and a reinstatement fee of Fifty Dollars ($50.00), and provision of such proof of the landscape architect's qualifications as may be required in the sound discretion of the board.

The board shall send a receipt to each landscape architect promptly upon payment of the renewal fee.

The board may recognize, prepare or administer continuing education programs for landscape architects as a basis for license renewal.

The board shall adopt an appropriate seal for use by licensed landscape architects.

SOURCES: Laws, 1973, ch. 471, § 8; reenacted, Laws, 1983, ch. 348, § 8; reenacted and amended, Laws, 1988, ch. 517, § 8; reenacted without change, Laws, 1991, ch. 318, § 8; Laws, 1994, ch. 424, § 3; reenacted without change, Laws, 1996, ch. 451, § 3; reenacted without change, Laws, 1999, ch. 371, § 8; reenacted without change, Laws, 2001, ch. 406, § 8; reenacted without change, Laws, 2005, ch. 361, § 8; Laws, 2007, ch. 309, § 3, eff from and after passage (approved Mar. 8, 2007.)

Editor's Note — Laws of 1996, ch. 451, § 7, amended Laws of 1994, ch. 424, § 6, to remove the language providing for the repeal of the amendment by that act effective July 1, 1996.

Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, contained a repealer for §§ 73-2-1 through 73-2-23, effective July 1, 2005. The repealer was deleted from Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, by Laws of 2005, ch. 361, § 14, effective from and after July 1, 2005.

Cross References — Disciplinary proceedings, see § 73-2-16.

Examination fees, see § 73-2-17.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 37 et seq.

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-2-16. Disciplinary proceedings.

(1) The board shall also have the power to revoke, suspend or annul the certificate or registration of a landscape architect or reprimand, censure or otherwise discipline a landscape architect.

(2) The board, upon satisfactory proof and in accordance with the provisions of this chapter, may take the disciplinary actions against any registered landscape architect for any of the following reasons:

(a) Violating any of the provisions of Sections 73-2-1 through 73-2-21 or the implementing bylaws, rules, regulations or standards of ethics or conduct duly adopted and promulgated by the board pertaining to the practice of landscape architecture;

(b) Fraud, deceit or misrepresentation in obtaining a certificate of registration;

(c) Gross negligence, malpractice, incompetency or misconduct in the practice of landscape architecture;

(d) Any professional misconduct, as defined by the board through bylaws, rules and regulations and standards of conduct and ethics (professional misconduct shall not be defined to include bidding on contracts for a price);

(e) Practicing or offering to practice landscape architecture on an expired license or while under suspension or revocation of a license unless said suspension or revocation be abated through probation;

(f) Practicing landscape architecture under an assumed or fictitious name;

(g) Being convicted by any court of a felony, except conviction of culpable negligent manslaughter, in which case the record of conviction shall be conclusive evidence;

(h) Willfully misleading or defrauding any person employing him as a landscape architect by any artifice or false statement;

(i) Having undisclosed financial or personal interest which compromises his obligation to his client;

(j) Obtaining a certificate by fraud or deceit; or

(k) Violating any of the provisions of this chapter.

(3) Any person may prefer charges against any other person for committing any of the acts set forth in subsection (2). Such charges need not be sworn to, may be made upon actual knowledge, or upon information and belief, and shall be filed with the board. In the event any person licensed under Sections 73-2-1 through 73-2-21 is expelled from membership in any Mississippi or national professional landscape architectural society or association, the board shall thereafter cite said person to appear at a hearing before the board and to show cause why disciplinary action should not be taken against that person.

The board shall investigate all charges filed with it and, upon finding reasonable cause to believe that the charges are not frivolous, unfounded or filed in bad faith, may, in its discretion, cause a hearing to be held, at a time and place fixed by the board, regarding the charges and may compel the accused by subpoena to appear before the board to respond to said charges.

No disciplinary action taken hereunder may be taken until the accused has been furnished both a statement of the charges against him and notice of the time and place of the hearing thereof, which shall be personally served on the accused or mailed by registered or certified mail, return receipt requested, to the last known business or residence address of the accused not less than thirty (30) days prior to the date fixed for the hearing.

(4) At any hearing held under the provisions of this section, the board shall have the power to subpoena witnesses and compel their attendance and require the production of any books, papers or documents. The hearing shall be conducted before the full board with the president of the board serving as the presiding judge. Counsel for the board shall present all evidence relating to the charges. All evidence shall be presented under oath, which may be administered by any member of the board, and thereafter the proceedings may, if necessary, be transcribed in full by the court reporter and filed as part of the record in the case. Copies of such transcription may be provided to any party to the proceedings at a cost to be fixed by the board.

All witnesses who shall be subpoenaed and who shall appear in any proceedings before the board shall receive the same fees and mileage as allowed by law in judicial civil proceedings, and all such fees shall be taxed as part of the costs of the case.

Where in any proceedings before the board any witness shall fail or refuse to attend upon subpoena issued by the board, shall refuse to testify or shall refuse to produce any books and papers, the production of which is called for by the subpoena, the attendance of such witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

The accused shall have the right to be present at the hearing in person, by counsel or other representative, or both. The accused shall have the right to present evidence and to examine and cross-examine all witnesses. The board is authorized to continue or recess the hearing as may be necessary.

(5) At the conclusion of the hearing, the board may either decide the issue at that time or take the case under advisement for further deliberation. The board shall render its decision not more than forty-five (45) days after the close of the hearing, and shall forward to the last known business or residence address of the accused by certified or registered mail, return receipt requested, a written statement of the decision of the board.

If a majority of the board finds the accused guilty of the charges filed, the board may: (a) issue a public or private reprimand; (b) suspend or revoke the license of the accused, if the accused is a registrant; or (c) in lieu of or in addition to such reprimand, suspension or revocation, assess and levy upon the guilty party a monetary penalty of not less than One Hundred Dollars ($100.00) nor more than Five Thousand Dollars ($5,000.00) for each violation.

(6) A monetary penalty assessed and levied under this section shall be paid to the board upon the expiration of the period allowed for appeal of such

penalties under this section, or may be paid sooner if the guilty party elects. Money collected by the board under this section shall be deposited to the credit of the board's general operating fund.

When payment of a monetary penalty assessed and levied by the board in accordance with this section is not paid when due, the board shall have the power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county and judicial district of the residence of the guilty party and if the guilty party be a nonresident of the State of Mississippi, such proceedings shall be in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(7) When the board has taken a disciplinary action under this section, the board may, in its discretion, stay such action and place the guilty party on probation for a period not to exceed one (1) year upon the condition that the guilty party shall not further violate either the law of the State of Mississippi pertaining to the practice of landscape architecture or the bylaws, rules and regulations, or standards of conduct and ethics promulgated by the board.

(8) The board, in its discretion, may assess and tax any part or all of the costs of any disciplinary proceedings conducted under this section against the accused, if the accused is found guilty of the charges.

(9) The power and authority of the board to assess and levy the monetary penalties provided for in this section shall not be affected or diminished by any other proceeding, civil or criminal, concerning the same violation or violations except as provided in this section.

(10) The board, for sufficient cause, may reissue a revoked license of registration whenever a majority of the board members vote to do so but in no event shall a revoked license be issued within two (2) years of the revocation. A new license of registration required to replace a revoked, lost, mutilated or destroyed license may be issued, subject to the rules of the board, for a charge not to exceed Twenty-five Dollars ($25.00).

(11) The board may direct the advisory committee to review and investigate any charges brought against any landscape architect under this chapter and to hold the hearings provided for in this section and to make findings of fact and recommendations to the board concerning the disposition of such charges.

(12) Nothing herein contained shall preclude the board or advisory committee from initiating proceedings in any case. The advisory committee shall furnish legal advice and assistance to the board whenever such service is requested.

(13) In addition to the reasons specified in subsection (2) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any

conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1988, ch. 517, § 9; reenacted without change, Laws, 1991, ch. 318, § 9; Laws, 1994, ch. 424, § 4; reenacted without change, Laws, 1996, ch. 451, § 4; Laws, 1996, ch. 507, § 22; reenacted without change, Laws, 1999, ch. 371, § 9; reenacted without change, Laws, 2001, ch. 406, § 9; reenacted without change, Laws, 2005, ch. 361, § 9, eff from and after July 1, 2005.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors. The words "of this act" were deleted following "Section 93-11-153" and following all occurrences of "Section 93-11-157 or 93-11-163." The Joint Committee ratified the corrections at its May 16, 2002 meeting.

Editor's Note — Laws of 1996, ch. 451, § 7, amended Laws of 1994, ch. 424, § 6, to remove the language providing for the repeal of the amendment by that act effective July 1, 1996.

Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, contained a repealer for §§ 73-2-1 through 73-2-23, effective July 1, 2005. The repealer was deleted from Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, by Laws of 2005, ch. 361, § 14, effective from and after July 1, 2005.

Cross References — Conduct of hearings by the advisory committee, see § 73-2-13.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

§ 73-2-17. Examination fees; certificate fees.

Each applicant for examination as a landscape architect shall pay to the board for the purposes of procuring, administering and grading the examination, an administration fee not to exceed One Hundred Dollars ($100.00) together with an application fee in such amount as the board may set, but in no event to exceed the actual cost to the board of purchasing, preparing and evaluating the examination. Upon passing the examination and meeting the requirements of this chapter and upon paying an initial registration fee in an amount set by the board, an applicant shall be issued an original certificate as a licensed landscape architect and a rubber stamp bearing the seal adopted by the board for use by landscape architects. Each holder of a certificate as provided herein shall be entitled to practice as a licensed landscape architect without additional fee or charge until the next biennial renewal period, and thereafter upon payment of the biennial license fee as provided by Section 73-2-15.

A fee of Twenty-five Dollars ($25.00) shall be charged for each duplicate certificate issued by the board.

All checks or money orders submitted to the board shall be made payable to the board.

SOURCES: Laws, 1973, ch. 471, § 9; reenacted and amended, Laws, 1983, ch. 348, § 9; reenacted and amended, Laws, 1988, ch. 517, § 10; reenacted without change, Laws, 1991, ch. 318, § 10; reenacted without change, Laws, 1999, ch. 371, § 10; reenacted without change, Laws, 2001, ch. 406, § 10; reenacted without change, Laws, 2005, ch. 361, § 10, eff from and after July 1, 2005.

Editor's Note — Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, contained a repealer for §§ 73-2-1 through 73-2-23, effective July 1, 2005. The repealer was deleted from Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, by Laws of 2005, ch. 361, § 14, effective from and after July 1, 2005.

Cross References — Disciplinary proceedings, see § 73-2-16.

§ 73-2-19. Practices exempt from licensing.

This chapter shall not require licensing in the following cases:

(a) The practice of landscape architecture by any person who acts under the supervision of a registered landscape architect or by an employee of a person lawfully engaged in the practice of landscape architecture and who, in either event, does not assume responsible charge of design or supervision.

(b) The practice of landscape architecture by employees of the United States government while engaged within this state in the practice of landscape architecture for said government.

(c) The practice of planning as customarily done by regional and urban planners.

(d) The practice of arborists, foresters, gardeners, home builders, floriculturists and ornamental horticulturists performing their respective trades or professions.

(e) The practice of any nurseryman or landscape contractor to practice planting design, planting, and location and arrangement of plant materials.

(f) The practice of architecture or engineering as defined by the laws of the State of Mississippi including, but not limited to, such planting as might be incidental to such practice.

(g) The work or practice of a regular employee of a public service company or public utility, by rendering to such company landscape architectural service in connection with its facilities which are subject to regulation, supervision and control in order to safeguard life, health and property by the Public Service Commission of this state shall be exempt so long as such person is thus actually and exclusively employed.

(h) Any person, firm or corporation performing landscape architecture and working on his own land or property.

(i) Golf course architects engaged in the preparation of drawings and specifications for a golf course, in accordance with accepted professional standards of public health and safety.

SOURCES: Laws, 1973, ch. 471, § 10; reenacted, Laws, 1983, ch. 348, § 10; reenacted and amended, Laws, 1988, ch. 517, § 11; reenacted without change, Laws, 1991, ch. 318, § 11; Laws, 1994, ch. 558, § 23; Laws, 1994, ch. 424, § 5; reenacted without change, Laws, 1996, ch. 451, § 5; reenacted without change, Laws, 1999, ch. 371, § 11; reenacted and amended, Laws, 2001, ch. 406, § 11; reenacted without change, Laws, 2005, ch. 361, § 11, eff from and after July 1, 2005.

Editor's Note — Laws of 1994, ch. 558, § 24, provides as follows:

"SECTION 24. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1996, ch. 451, § 7, amended Laws of 1994, ch. 424, § 6, to remove the language providing for the repeal of the amendment by that act effective July 1, 1996.

Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, contained a repealer for §§ 73-2-1 through 73-2-23, effective July 1, 2005. The repealer was deleted from Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, by Laws of 2005, ch. 361, § 14, effective from and after July 1, 2005.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 24 et seq.

CJS. 53 C.J.S., Licenses §§ 56, 57.

Practice References. The American Institute of Architects Legal Citator (Matthew Bender).

§ 73-2-21. Prohibited acts.

It shall be a misdemeanor for any person to:

(a) Offer to practice or hold himself out as entitled to practice landscape architecture, unless duly certified and registered under this chapter.

(b) Present as his own the certificate of another.

(c) Give false or forged evidence to the board or any member thereof in obtaining a certificate.

(d) Falsely impersonate any other practitioner of like or different name.

(e) Use or attempt to use a certificate that has been revoked.

(f) Otherwise violate any of the provisions of this chapter.

Such misdemeanor shall be punishable by a fine of not less than Five Hundred Dollars ($500.00) and not more than One Thousand Dollars ($1,000.00), or imprisonment for not more than one (1) year in the county jail, or both.

If any person, firm or corporation violates any of the provisions of this chapter, the secretary of the board shall, upon direction of a majority of the board, in the name of the State of Mississippi, acting through an attorney employed by the board, apply in any chancery court of competent jurisdiction for an injunction or temporary restraining order pursuant to the Mississippi Rules of Civil Procedure enjoining such violation or for an order enforcing compliance with the provisions of this chapter. If at such hearing it is established that such person has violated or is violating this chapter, the court may, in addition to enjoining such violation or enforcing compliance with this chapter, award all cost and expenses, including reasonable attorney's fees, to the board. In case of violation of any decree issued in compliance with this paragraph, the court may try and punish the offender for contempt of court and shall fine such offender a sum of not less than Two Hundred Fifty Dollars ($250.00) per offense. Each day of such violation shall constitute a distinct and separate offense.

SOURCES: Laws, 1973, ch. 471, § 11; reenacted, Laws, 1983, ch. 348, § 11; reenacted and amended, Laws, 1988, ch. 517, § 12; reenacted without change, Laws, 1991, ch. 318, § 11; reenacted without change, Laws, 1999, ch. 371, § 12; reenacted without change, Laws, 2001, ch. 406, § 12; reenacted without change, Laws, 2005, ch. 361, § 12, eff from and after July 1, 2005.

Editor's Note — Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, contained a repealer for §§ 73-2-1 through 73-2-23, effective July 1, 2005. The repealer was deleted from Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, by Laws of 2005, ch. 361, § 14, effective from and after July 1, 2005.

Cross References — Disciplinary proceedings, see § 73-2-16.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violations, see § 99-19-73.

Rule governing the procedure for injunctions and temporary restraining orders, see Miss. R. Civ. P. 65.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 43.

CJS. 53 C.J.S., Licenses §§ 125 et seq.

§ 73-2-23. Prosecution of offenses.

All courts of competent jurisdiction within their respective territorial jurisdiction are hereby empowered to hear, try and determine such crimes without indictment and to impose in full the punishments of fines and imprisonments herein prescribed. All violations of this chapter, when reported to the board and duly substantiated by affidavits or other satisfactory evidence, shall be investigated by it, and if the report is found to be true and the evidence substantiated, the board shall report such violations to the Attorney General and request prompt prosecution.

SOURCES: Laws, 1973, ch. 471, § 12; reenacted, Laws, 1983, ch. 348, § 12; reenacted without change, Laws, 1991, ch. 318, § 13; reenacted without change, Laws, 1999, ch. 371, § 13; reenacted without change, Laws, 2001, ch. 406, § 13; reenacted without change, Laws, 2005, ch. 361, § 13, eff from and after July 1, 2005.

Editor's Note — Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, contained a repealer for §§ 73-2-1 through 73-2-23, effective July 1, 2005. The repealer was deleted from Laws of 1999, ch. 371, § 17, as amended by Laws of 2001, ch. 406, § 15, by Laws of 2005, ch. 361, § 14, effective from and after July 1, 2005.

Cross References — Disciplinary proceedings, see § 73-2-16.

§ 73-2-25. Repealed.

Repealed by Laws of 2001, ch. 406, § 14, eff from and after July 1, 2001.

[Laws, 1973, ch. 471, § 13; reenacted, Laws, 1983, ch. 348, § 13; reenacted without change, Laws, 1991, ch. 318, § 14; reenacted without change, Laws, 1999, ch. 371, § 14, eff from and after July 1, 1999.]

Editor's Note — Former § 73-2-25 provided that the use of landscape architects for landscape architecture jobs was not required under this chapter.

§ 73-2-27. Repealed.

Repealed by Laws of 1999, ch. 371, § 15, eff from and after July 1, 1999.

[Laws, 1979, ch. 301, § 19; ch. 357, § 5; Laws, 1983, ch. 348, § 14; Laws, 1991, ch. 318, § 15, eff from and after July 1, 1991; reenacted without change, Laws, 1996, ch. 451, § 6, eff from and after July 1, 1996.]

Editor's Note — Former § 73-2-27 provided for the repeal of §§ 73-2-1 through 73-2-25.

CHAPTER 3

Attorneys at Law

Article 1. Admission and Conduct of Attorneys 73-3-1
Article 3. Bar Association 73-3-101
Article 5. Law Students 73-3-201
Article 7. Procedures to Discipline and to Determine Personal Incapacity to Practice Law 73-3-301
Article 9. Repeal Provisions for Board of Bar Admissions 73-3-401

ARTICLE 1.

ADMISSION AND CONDUCT OF ATTORNEYS.

SEC.
73-3-1. Repealed.
73-3-2. Power to admit persons to bar; qualifications for admission; appeal from denial of admission; board of bar admissions; written examination; review for failing applicants; fees; certification of applicants for admission; issuance of order granting license to practice.
73-3-3 through 73-3-23. Repealed.
73-3-25. Admission of lawyers from other states.
73-3-27 and 73-3-29. Repealed.
73-3-31. Persons excepted from educational requirements.
73-3-33. Repealed.
73-3-35. Oath in each court.
73-3-37. Duties of attorneys.
73-3-39. Attorneys of other states may appear and plead in special causes; conditions and limitations.
73-3-41. Persons convicted of felonies barred from admission; disbarment of licensed attorneys convicted of felonies.
73-3-43. Clerks, sheriffs and other officers prohibited.
73-3-45. Restrictions of certain persons to practice law.
73-3-47. Partner of justice court judge prohibited from acting as attorney before such judge; penalty.
73-3-49. Partner of district attorney or county attorney not to defend in certain criminal cases.
73-3-51. Attorney general and district attorneys and their law partners not to accept employment from corporations of certain kind.
73-3-53. Repealed.
73-3-55. Unlawful to practice law without license; certain abstract companies may certify titles.
73-3-57. Unlawful to encourage litigation.
73-3-59. Unlawful to encourage litigation; penalty.
73-3-61 and 73-3-63. Repealed.

§ 73-3-1. Repealed.

Repealed by Laws of 1979, ch. 486, § 10, eff from and after November 1, 1979.

[Codes, 1942, § 8647; Laws, 1932, ch. 122; Laws, 1954, ch. 213, §§ 1, 2 ¶¶ 1, 2]

Editor's Note — Former § 73-3-1 created the Board of Bar Admissions. See now § 73-3-2.

Laws of 1980, ch. 560, § 27, purported to amend § 73-3-1 which was repealed by section 10 of Chapter 486, Laws of 1979. It appears, however, that the Mississippi Legislature had no intent to alter the procedures established by § 73-3-2 for admitting persons to the bar, but rather that Section 27, Chapter 560, Laws of 1980 was intended only to alter the provisions relating to compensation of members of the board of bar admissions pursuant to the general intent of said Chapter 560 to establish and prescribe uniform per diem compensation for members of all state boards. The Mississippi Attorney General's Office has directed the publisher's editorial staff not to implement the amendment to § 73-3-1 by Section 27 of Chapter 560, Laws of 1980. For provisions relating to compensation of the members of the board of bar admissions, see § 73-3-2.

§ 73-3-2. Power to admit persons to bar; qualifications for admission; appeal from denial of admission; board of bar admissions; written examination; review for failing applicants; fees; certification of applicants for admission; issuance of order granting license to practice.

(1) **Power to admit persons to practice.** — The power to admit persons to practice as attorneys in the courts of this state is vested exclusively in the Supreme Court of Mississippi.

(2) **Qualifications.** — (a) Each applicant for admission to the bar, in order to be eligible for examination for admission, shall be at least twenty-one (21) years of age, of good moral character, and shall present to the Board of Bar Admissions satisfactory evidence:

(a)(i) That he has successfully completed, or is within sixty (60) days of completion of, a general course of study of law in a law school which is provisionally or fully approved by the section on legal education and admission to the bar of the American Bar Association, and that such applicant has received, or will receive within sixty (60) days, a diploma or certificate from such school evidencing the satisfactory completion of such course, but in no event shall any applicant under this paragraph be admitted to the bar until such applicant actually receives such diploma or certificate. However, an applicant who, as of November 1, 1981, was previously enrolled in a law school in active existence in Mississippi for more than ten (10) years prior to the date of application shall be eligible for examination for admission; provided that such an applicant graduated prior to November 1, 1984;

(ii) That he has notified the Board of Bar Admissions in writing of an intention to pursue a general course of study of law under the supervision of a Mississippi lawyer prior to July 1, 1979, and in fact began study prior to July 1, 1979, and who completed the required course of study prior to November 1, 1984, in accordance with Sections 73-3-13(b) and 73-3-15 as the same exist prior to November 1, 1979; or

(iii) That in addition to complying with either of the above requirements, he has received a bachelor's degree from an accredited college or university or that he has received credit for the requirements of the first three (3) years of college work from a college or university offering an integrated six-year prelaw and law course, and has completed his law course at a college or university offering such an integrated six-year course. However, applicants who have already begun the general course of study of law as of November 1, 1979, either in a law school or under the supervision of a Mississippi lawyer shall submit proof they have successfully completed two (2) full years of college work.

(b) The applicant shall bear the burden of establishing his or her qualifications for admission to the satisfaction of the Board of Bar Admissions. An applicant denied admission for failure to satisfy qualifications for admission shall have the right to appeal from the final order of the board to the Chancery Court of Hinds County, Mississippi, within thirty (30) days of entry of such order of denial.

(3) **Creation of Board of Bar Admissions.** — There is hereby created a board to be known as the "Board of Bar Admissions" which shall be appointed by the Supreme Court of Mississippi. The board shall consist of nine (9) members, who shall be members in good standing of the Mississippi State Bar and shall serve for terms of three (3) years. Three (3) members shall be appointed from each Supreme Court district, one (1) by each Supreme Court Justice from his district, with the original appointments to be as follows: Three (3) to be appointed for a term of one (1) year, three (3) to be appointed for a term of two (2) years, and three (3) to be appointed for a term of three (3) years, one (1) from each district to be appointed each year. No member of the Board of Bar Admissions may be a member of the Legislature. Vacancies during a term shall be filled by the appointing justice or his successor for the remainder of the unexpired term.

The board shall promulgate the necessary rules for the administration of their duties, subject to the approval of the Chief Justice of the Supreme Court.

(4) **Written examination as prerequisite to admission.** — Every person desiring admission to the bar, shall be required to take and pass a written bar examination in a manner satisfactory to the Board of Bar Admissions. The Board of Bar Admissions shall conduct not less than two (2) bar examinations each year.

(5) **Oath and compensation of board members.** — The members of the Board of Bar Admissions shall take and subscribe an oath to be administered by one (1) of the judges of the Supreme Court to faithfully and impartially discharge the duties of the office. The members shall receive compensation as established by the Supreme Court for preparing, giving and grading the examination plus all reasonable and necessary travel expenses incurred in the performance of their duties under the provisions of this section.

(6) **Procedure for applicants who have failed.** — Any applicant who fails the examination shall be allowed to take the next scheduled examination. A failing applicant may request in writing from the board, within thirty (30) days after the results of the examination have been made public, copies of his answers and model answers used in grading the examination, at his expense.

If a uniform, standardized examination is administered, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board. Any failing applicant shall have a right to a review of his failure by the board. The board shall enter an order on its minutes, prior to the administration of the next bar examination, either granting or denying the applicant's review, and shall notify the applicant of such order. The applicant shall have the right to appeal from this order to the Chancery Court of Hinds County, Mississippi, within thirty (30) days of entry of such order.

(7) **Fees.** — The board shall set and collect the fees for examination and for admission to the bar. The fees for examination shall be based upon the annual cost of administering the examinations. The fees for admission shall be based upon the cost of conducting an investigation of the applicant and the administrative costs of sustaining the board, which shall include, but shall not be limited to:

(a) Expenses and travel for board members;
(b) Office facilities, supplies and equipment; and
(c) Clerical assistance.

All fees collected by the board shall be paid to the State Treasurer, who shall issue receipts therefor and who shall deposit such funds in the State Treasury in a special fund to the credit of said board. All such funds shall be expended only in accordance with the provisions of Chapter 496, Laws of 1962, as amended, being Section 27-103-1 et seq., Mississippi Code of 1972.

(8) The board, upon finding the applicant qualified for admission, shall issue to the applicant a certificate of admission. The applicant shall file the certificate and a petition for admission in the Chancery Court of Hinds County, Mississippi, or in the chancery court in the county of his residence, or, in the case of an applicant who is a nonresident of the State of Mississippi, in the chancery court of a county in which the applicant intends to practice. The chancery court shall, in termtime or in vacation, enter on the minutes of that court an order granting to the applicant license to practice in all courts in this state, upon taking by the applicant in the presence of the court, the oath prescribed by law, Section 73-3-35, Mississippi Code of 1972.

(9) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Laws, 1979, ch. 486, §§ 1-8; reenacted and amended, Laws, 1983, ch. 457, § 1; Laws, 1985, ch. 400; Laws, 1991, ch. 560, § 1; Laws, 1997, ch. 588, § 25; reenacted without change, Laws, 1999, ch. 372, § 2; reenacted without change, Laws, 2003, ch. 524, § 1; reenacted without change, Laws, 2006, ch. 471, § 1, eff from and after July 1, 2006.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in (2)(a)(iii) and (4). The words "he has" in (2)(a)(iii) were changed to "they have" so that "... applicants who have already begun the general course of study of law ... shall submit proof he has successfully completed ... college work." will read as

"...applicants who have already begun the general course of study of law ...shall submit proof they have successfully completed ...college work." In addition, the words "or graduation" were deleted from the subsection heading in (4) so that "(4) Written examination or graduation as prerequisite to admission." will read as "(4) Written examination as prerequisite to admission." The Joint Committee ratified the corrections at its August 5, 2008 meeting.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Sections 27-103-1 through 27-103-73, referred to in the last paragraph of (7), were repealed by Laws of 1984, ch. 448, § 334, effective from and after July 1, 1984.

Sections 73-3-13 (which outlined the powers of the board of bar admissions) and 73-3-15 (which provided for the study of law under the suspension of an attorney) referred to in (2)(a)(ii) were repealed by Laws of 1979, ch. 486, § 10, effective from and after November 1, 1979.

Former § 73-3-401, which provided for the repeal of §§ 73-3-2 through 73-3-59, was repealed by Laws of 2006, ch. 471, § 16, effective from and after July 1, 2006.

Cross References — Admission of lawyers from other states, see § 73-3-25.

Prohibition against board of bar admissions from bringing or maintaining actions to enjoin or prohibit any person from engaging in unauthorized practice of law, and requiring complaints to be delivered to board of commissioners of Mississippi State Bar, see § 73-51-1.

Rules governing admission to Mississippi Bar generally, see Rules Governing Admission to the Mississippi Bar I through XIV.

Continuing education requirements to which attorneys are subject following admission to the bar, see Rules and Regulations for Mandatory Continuing Legal Education (Rules 1 through 6).

JUDICIAL DECISIONS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 73-3-13.

1. In general.

Applicant contended that his due process rights were violated by the Mississippi Board of Bar Admissions' denial of his request to be admitted to the bar, and he further contended the burden was on the Board to produce the evidence to support the Board's finding; however, the applicant bore the burden of establishing his or her qualifications for admission to the satisfaction of the Board. Dean v. Miss. Bd. of Bar Admissions (In re Dean), 972 So. 2d 590 (Miss. 2008).

The Supreme Court will vacate or modify the Board of Bar Admissions' bar examination grading decision only where it is found to be "arbitrary, capricious or malicious." Mississippi Bd. of Bar Admissions v. Applicant F, 582 So. 2d 377 (Miss. 1991), cert. denied, 502 U.S. 984, 112 S. Ct. 591, 116 L. Ed. 2d 616 (1991).

[Former] State Supreme Court's Rule V on bar admission repeats § 73-3-2(2)(c) [now § 73-3-2(2)(a)(iii)] in substance, notwithstanding that it lacks words "in addition to", and is clear enough to inform reasonable person that, at very least, it does not authorize alternative bar admission. Nordgren v. Hafter, 789 F.2d 334 (5th Cir. 1986), cert. denied, 479 U.S. 850, 107 S. Ct. 177, 93 L. Ed. 2d 113 (1986).

Provision of § 73-3-2(2)(a), which admits for examination graduates of certain unaccredited Mississippi Law Schools but does not admit graduates of unaccredited out-of-state law schools, does not violate equal protection clause of U.S. Constitution. Nordgren v. Hafter, 789 F.2d 334 (5th Cir. 1986), cert. denied, 479 U.S. 850, 107 S. Ct. 177, 93 L. Ed. 2d 113 (1986).

Mississippi Bar Admission Rules, Miss Code § 73-3-2(2)(a), which exempted from

ABA accreditation and written exam requirements graduates from non-ABA accredited Mississippi law schools who were enrolled and graduated prior to date set up by grandfather provision, but not graduates from non-ABA accredited out-of-state law schools, did not violate equal protection where Mississippi had rational basis for distinction embodied in its admissions criteria including using grandfather clause in order not to unduly prejudice applicants who relied on prior statutory avenue for bar admissions, and avoidance of provisional accreditation of every out-of-state non-ABA accredited law school with Mississippi bound graduates; bar admission statute's "law clerkship" exception controlled by same analysis, Miss Code § 73-3-2(2)(b). Nordgren v. Hafter, 789 F.2d 334 (5th Cir. 1986), cert. denied, 479 U.S. 850, 107 S. Ct. 177, 93 L. Ed. 2d 113 (1986).

Provision of § 73-3-2(2)(b), which creates "law clerkship" exception to ABA accreditation and bar exam requirement, does not violate equal protection clause of U.S. Constitution. Nordgren v. Hafter, 789 F.2d 334 (5th Cir. 1986), cert. denied, 479 U.S. 850, 107 S. Ct. 177, 93 L. Ed. 2d 113 (1986).

Provisions of § 73-3-2(2)(c) [now § 73-3-2(2)(a)(iii)] are not unconstitutionally vague. Nordgren v. Hafter, 789 F.2d 334 (5th Cir. 1986), cert. denied, 479 U.S. 850, 107 S. Ct. 177, 93 L. Ed. 2d 113 (1986).

Plaintiff bar admission applicant was not denied due process under statutory provision, Miss Code § 73-3-2(2)(c) [now § 73-3-2(2)(a)(iii)], requiring that both ABA-accredited law schools and alternative "reliance class" applicants satisfy certain undergraduate educational requirements where plaintiff's factual assertion that provision was amended in such manner so as to clarify that provision was merely additional educational requirement rather than alternative prerequisite to bar admission was wrong, and where rule clearly informed reasonable person that provision could not authorize alternative bar admission. Nordgren v. Hafter, 789 F.2d 334 (5th Cir. 1986), cert. denied, 479 U.S. 850, 107 S. Ct. 177, 93 L. Ed. 2d 113 (1986).

Limiting qualified applicants to those with degrees from ABA-accredited law schools does not deprive applicant of fundamental right to livelihood, does not violate privileges and immunities clause of United States Constitution, and is not restraint of trade in violation of Sherman Antitrust Act (15 USCS §§ 1 et seq.); statutory requirement that applicants for bar examination present evidence of having received degree from ABA-accredited law school is not arbitrary, capricious and unreasonable; exceptions provided in statute for individuals enrolled in state college of law without ABA accreditation, for those completing course of study under supervision of Mississippi attorney, and for those afforded diploma privileges under former Mississippi Code § 73-3-33 are not capricious and unreasonable determinations on part of legislature. Nordgren v. Hafter, 616 F. Supp. 742 (S.D. Miss. 1985), aff'd, 789 F.2d 334 (5th Cir. 1986), cert. denied, 479 U.S. 850, 107 S. Ct. 177, 93 L. Ed. 2d 113 (1986).

State action doctrine of immunity from antitrust liability applies to state committee's grading of bar examination where state constitution vests authority in court to determine who should be admitted to practice law in state, court has established committee to examine and recommend applicants for admission to bar, and court rules delegate examinations and applicant recommendations to committee, while reserving to court ultimate authority to grant or deny admission. Hoover v. Ronwin, 466 U.S. 558, 104 S. Ct. 1989, 80 L. Ed. 2d 590 (1984), reh'g denied, 467 U.S. 1268, 104 S. Ct. 3564, 82 L. Ed. 2d 865 (1984).

2.-5. [Reserved for future use.]

6. Under former § 73-3-13.

A class action asserting the unconstitutionality of the residence requirements for applicants seeking to take the bar examination should be heard by a three-judge court. Kline v. Rankin, 489 F.2d 387 (5th Cir. 1974).

That portion of this section [Code 1942, § 8654] which requires an applicant to take the bar examination to be a resident of the state at the time of his application is valid and constitutional. Lipman v. Van Zant, 329 F. Supp. 391 (N.D. Miss. 1971).

That portion of this section [Code 1942, § 8654] which requires a resident applicant, in order to be eligible to take the state bar examination, to reside in the state for one year is unconstitutional and void, as violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution. Lipman v. Van Zant, 329 F. Supp. 391 (N.D. Miss. 1971).

One-year residency requirement of Code 1942, § 8654, for admission to state bar was violative of equal protection under the Fourteenth Amendment, but severable from other provisions of the statute. Lipman v. Van Zant, 329 F. Supp. 391 (N.D. Miss. 1971).

The invalid one-year residency requirement of the Mississippi statute for admission to the state bar, was severable from other provisions of the statute, and eliminating the unconstitutional phrase "for one year preceding the date of the application," the provision in the statute that an applicant be a resident of the state when applying is a plainly divisible requirement and if valid should be upheld in accordance with a clearly expressed legislative intent as to the act's severability. Lipman v. Van Zant, 329 F. Supp. 391 (N.D. Miss. 1971).

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ALR. Sexual conduct or orientation as ground for denial of admission to bar. 21 A.L.R.4th 1109.

Failed applicant's right of access to bar examination questions and answers. 57 A.L.R.4th 1212.

Divorce and separation: goodwill in law practice as property subject to distribution on dissolution of marriage. 79 A.L.R.4th 171.

Sexual conduct or orientation as ground for denial of admission to bar. 105 A.L.R.5th 217.

Falsehoods, misrepresentations, impersonations, and other irresponsible conduct as bearing on requisite good moral character for admission to bar — Conduct related to admission to bar. 107 A.L.R.5th 167.

Failure to pay creditors as affecting applicant's moral character for purposes of admission to the bar. 108 A.L.R.5th 289.

Am Jur. 41 Am. Jur. Trials 445, Computer Technology in Civil Litigation.

41 Am. Jur. Trials 683, Computer Research for the Trial Lawyer.

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Zitrin and Mohr, Legal Ethics: Rules, Statutes and Comparisons, 2011 Edition (Matthew Bender).

§§ 73-3-3 through 73-3-23. Repealed.

Repealed by Laws of 1979, ch. 486, § 10, eff from and after November 1, 1979.

§ 73-3-3. [Codes, 1942, § 8648; Laws, 1932, ch. 122; Laws, 1954, ch. 213, § 3]

§ 73-3-5. [Codes, 1942, § 8650; Laws, 1932, ch. 122; Laws, 1954, ch. 213, § 4]

§ 73-3-7. [Codes, 1942, § 8652; Laws, 1932, ch. 122]

§ 73-3-9. [Codes, 1942, § 8652.5; Laws, 1954, ch. 213, § 5]

§ 73-3-11. [Codes, Hemingway's 1917, § 181; Laws, 1930, § 3682; 1942, § 8653; Laws, 1916, ch. 107; Laws, 1960, ch. 287]

§ 73-3-13. [Codes, Hemingway's 1917, § 182; 1930, § 3683; 1942, § 8654; Laws, 1916, ch. 107; Laws, 1954, ch. 213, § 6; Laws, 1974, ch. 510, § 1]

§ 73-3-15. [Codes, 1942, § 8654.5; Laws, 1954, ch. 213, § 7]

§ 73-3-17. [Codes, Hemingway's 1917, § 183; 1930, § 3684; 1942, § 8655; Laws, 1916, ch. 107]

§ 73-3-19. [Codes, Hemingway's 1917, § 184; 1930, § 3685; 1942, § 8657; Laws, 1916, ch. 107; Laws, 1974, ch. 510, § 2]

§ 73-3-21. [Codes, Hemingway's 1917, § 185; 1930, § 3686; 1942, § 8658; Laws, 1916, ch. 107; Laws, 1922, ch. 255; Laws, 1954, ch. 213, § 8; Laws, 1977, ch. 462]

§ 73-3-23. [Codes, Hemingway's 1921 Supp. § 185a; 1930, § 3687; 1942, § 8659; Laws, 1920, ch. 146; Laws, 1922, ch. 255; Laws, 1974, ch. 510, § 3; Laws, 1977, ch. 360]

Editor's Note — Former § 73-3-3 outlined the duties of the secretary of the State Bar.

Former § 73-3-5 outlined the powers of the board of bar admissions.

Former § 73-3-7 stated the general purpose of Article 1.

Former § 73-3-9 provided for the examination required for admission to the bar.

Former § 73-3-11 provided for the application to take the examination for admission to the bar.

Former § 73-3-13 outlined the qualifications necessary for admission to the bar.

Former § 73-3-15 provided for the study of law under the supervision of an attorney.

Former § 73-3-17 provided for an inquiry into the moral character and other qualifications of applicants to the bar.

Former § 73-3-19 provided for the subjects upon which applicants for bar admission could be examined.

Former § 73-3-21 provided for how applicants were to be admitted and enrolled as attorneys.

Former § 73-3-23 provided for the dismissal of an application.

For present similar provisions to former §§ 73-3-5 though 73-3-23, see § 73-3-2.

§ 73-3-25. Admission of lawyers from other states.

Any lawyer from another state whose requirements for admission to the bar are equivalent to those of this state, who has practiced not less than five (5) years in a state where he was then admitted may be admitted to the practice in this state upon taking and passing such examination as to his knowledge of law as may be prescribed by rules adopted by the Board of Bar Admissions and approved by the Supreme Court and upon complying with the other requirements as set out in the laws and rules governing admission to the bar. Provided, however, the laws of the state from which the applicant comes grant similar privileges to the applicants from this state.

Any lawyer from another state desiring to be admitted to practice in Mississippi must make application to the Board of Bar Admissions. Such applicant shall present to the bar evidence of his good standing in the state from which he came, including a certificate from the clerk of the highest appellate court of the state from which he came, and from two (2) members of the bar of such state, certifying to his qualifications, good standing and moral character of the applicant, and may require the submission of additional evidence by the applicant. Upon satisfactory proof of the applicant's qualifications and upon the applicant's compliance with the requirements of this section, the board shall issue a certificate of admission to the applicant, as prescribed in Section 73-3-2(8). Each such applicant shall pay an application fee prescribed by the Board of Bar Admissions according to Section 73-3-2(7).

SOURCES: Codes, Hemingway's 1921 Supp. § 185b; 1930, § 3688; 1942, §§ 8649, 8660; Laws, 1920, ch. 146; Laws, 1922, ch. 255; Laws, 1932, ch. 122; Laws, 1944, ch. 316; Laws, 1960, ch. 286; Laws, 1964, ch. 374, § 1; Laws, 1971, ch. 403, § 1; Laws, 1974, ch. 510, § 4; Laws, 1977, ch. 392; reenacted, Laws, 1983, ch. 457, § 2; Laws, 1991, ch. 560, § 2; reenacted without change, Laws, 1999, ch. 372, § 3; reenacted without change, Laws, 2003, ch. 524, § 2; reenacted without change, Laws, 2006, ch. 471, § 2, eff from and after July 1, 2006.

Cross References — Examination requirement for persons desiring admission to bar, generally, see § 73-3-2(4).

Attorneys from other states being allowed to appear and plead in special causes, see § 73-3-39.

Rules governing admission by comity and reciprocity, see Rules Governing Admission to the Mississippi Bar, Rule VI.

Comparable Laws from other States — Alabama: Ala. R. Gov'g Admis. Bar Rule VII.

Arkansas: Ark. R. Gov'g Admis. Bar XIV.
Florida: Fla. Bar Reg. R. 4-5.5.
Georgia: Ga. Sup. Ct. 4.
Louisiana: La. Sup. Ct. R. XVII.
North Carolina: N.C. R. Gov'g Admis. to Practice Law Rule .0502.
South Carolina: Rule 404, SCACR.
Tennessee: Tenn. Sup. Ct. R. 7, Sec. 5.01.
Texas: Tex. R. Gov. Bar Admis. XIV.
Virginia: Va. Sup. Ct. R. 1A:1.
West Virginia: W. Va. Admis. Practice Law, Rule 4.0.

JUDICIAL DECISIONS

1. In general.

State residency requirement for admission to bar, without examination, of lawyer admitted to practice in another state, violates federal constitution's privileges and immunities clause. Supreme Court v. Friedman, 487 U.S. 59, 108 S. Ct. 2260, 101 L. Ed. 2d 56 (1988).

The Mississippi scheme for licensing of attorneys, involving a bar examination, diploma privilege, and a reciprocity exemption, does not penalize the exercise of the right to interstate travel, and is not arbitrary or unrelated to any legitimate state purpose, and, therefore, does not violate equal protection; the bar examination itself, as currently administered, bears a rational relation to professional competence in the practice of law and, therefore, does not violate equal protection. Shenfield v. Prather, 387 F. Supp. 676 (N.D. Miss. 1974).

RESEARCH REFERENCES

ALR. Criminal record as affecting applicant's moral character for purposes of admission to the bar. 88 A.L.R.3d 192.

Violation of draft laws as affecting character for purposes of admission to the bar. 88 A.L.R.3d 1055.

Failure to pay creditors as affecting applicant's moral character for purposes of admission to the bar. 4 A.L.R.4th 436.

Validity, construction, and effect of reciprocity provisions for admission to bar of attorney admitted to practice in another jurisdiction. 14 A.L.R.4th 7.

Attorney's right to appear pro hac vice in state court. 20 A.L.R.4th 855.

Sexual conduct or orientation as ground for denial of admission to bar. 21 A.L.R.4th 1109.

Falsehoods, misrepresentations, impersonations, and other irresponsible conduct as bearing on requisite good moral character for admission to bar. 30 A.L.R.4th 1020.

Validity, construction, and application of enactment, implementation, or repeal of formal educational requirement for admission to the bar. 44 A.L.R.4th 910.

Am Jur. 7 Am. Jur. 2d, Attorneys at Law § 23.

CJS. 7 C.J.S., Attorney and Client §§ 23-25.

Law Reviews. Hafter, Toward the Multistate Practice of Law Through Admission by Reciprocity. 53 Miss. L. J. 1, March, 1983.

§§ 73-3-27 and 73-3-29. Repealed.

Repealed by Laws of 1979, ch. 486, § 10, eff from and after November 1, 1979.

§ 73-3-27. [Codes, Hemingway's 1917, § 186; 1930, § 3689; 1942, § 8661; Laws, 1916, ch. 107; Laws, 1964, ch. 375, § 1; Laws, 1974, ch. 510, § 5]

§ 73-3-29. [Codes, Hemingway's 1917, § 187; 1930, § 3690; 1942, § 8662; Laws, 1916, ch. 107; Laws, 1954, ch. 213, § 9; Laws, 1960, ch. 288; Laws, 1971, ch. 385, § 1; Laws, 1977, ch. 444]

Editor's Note — Former § 73-3-27 provided for the time and place for meetings of the board of bar admissions.

Former § 73-3-29 provided for an application fee for persons taking the bar examination.

For present similar provisions, see § 73-3-2(7).

§ 73-3-31. Persons excepted from educational requirements.

The educational requirements both as to general education and legal education shall not apply to any person who may have graduated from a law school prior to October 1, 1954.

SOURCES: Codes, 1942, § 8662.3; Laws, 1954, ch. 213, § 10; reenacted without change, Laws, 1983, ch. 457, § 3; reenacted, Laws, 1991, ch. 560, § 3; reenacted without change, Laws, 1999, ch. 372, § 4 ; reenacted without change, Laws, 2003, ch. 524, § 3; reenacted without change, Laws, 2006, ch. 471, § 3, eff from and after July 1, 2006.

RESEARCH REFERENCES

ALR. Validity, construction, and application of enactment, implementation, or repeal of formal educational requirement for admission to the bar. 44 A.L.R.4th 910.

§ 73-3-33. Repealed.

Repealed by Laws of 1979, ch. 486, § 10, eff from and after November 1, 1979.

[Codes, Hemingway's 1917, § 188; 1930, § 3691; 1942, § 8663; Laws, 1916, ch. 107]

Editor's Note — Former § 73-3-33 provided that a person with a diploma from the University of Mississippi was entitled to admission to the bar.

§ 73-3-35. Oath in each court.

Every attorney and counselor at law, before he or she shall be permitted to practice, shall produce his or her license in each court where he or she intends to practice, and in the presence of such court, shall take the following oath or affirmation to wit:

"I do solemnly swear (or affirm) that I will demean myself, as an attorney and counselor of this court, according to the best of my learning and ability, and with all good fidelity as well to the court as to the client; that I will use no falsehood nor delay any person's cause for lucre or malice, and that I will support the Constitution of the State of Mississippi and the Constitution of the United States. So help me God."

And thereupon the name of such person, with the date of his or her admission, shall be entered in a roll or book to be kept in each court for that purpose.

SOURCES: Codes, Hutchinson's 1848, ch. 26, art. 3 (1, 3); 1857, ch. 9, art. 2; 1871, § 2245; 1880, § 2397; 1892, § 209; 1906, § 215; Hemingway's 1917, § 189; 1930, § 3692; 1942, § 8664; reenacted without change, Laws, 1983, ch. 457, § 4; reenacted, Laws, 1991, ch. 560, § 4; reenacted without change, Laws, 1999, ch. 372, § 5; reenacted without change, Laws, 2003, ch. 524, § 4; reenacted without change, Laws, 2006, ch. 471, § 4; Laws, 2011, ch. 454, § 1, eff from and after July 1, 2011.

Cross References — Taking of oath prior to entry of order granting license to practice, see § 73-3-2.

JUDICIAL DECISIONS

1. In general.

In defendant's capital murder case, although the prosecutor's comments to the jury on defendant having the protection of the constitution while the victim did not were condemned, they did not constitute reversible error where the argument was likely not to have influenced the jury one way or the other. Evidence of defendant's callous indifference to human life was overwhelming, and the jury's sentence was well-supported by the record. Goodin v. State, 856 So. 2d 267 (Miss. 2003), writ of certiorari denied by 541 U.S. 947, 124 S.

Ct. 1681, 158 L. Ed. 2d 375, 2004 U.S. LEXIS 2196, 72 U.S.L.W. 3598 (2004).

A prosecutor violated his oath when, in a capital murder prosecution, he instructed the jurors to ignore the defendant's constitutional rights; however, such error was harmless as his crude appeals likely did not influence the jury one way or the other. Goodin v. State, 787 So. 2d 639 (Miss. 2001), writ of certiorari denied by 535 U.S. 996, 122 S. Ct. 1558, 152 L. Ed. 2d 481, 2002 U.S. LEXIS 2500, 70 U.S.L.W. 3640 (2002), remanded by 2009 Miss. LEXIS 405 (Miss. Aug. 27, 2009), remanded by 102 So. 3d 1102, 2012 Miss. LEXIS 616 (Miss. 2012).

In a proceeding to remove the disability of minority, the attorney representing the minor violated § 73-3-35 by failing to make a full disclosure to the chancellor regarding the existence of a guardianship over the minor in another county; the attorney's oath of office required the attorney to deal honestly with the court and disclose all material facts. Barrett v. Mississippi Bar, 648 So. 2d 1154 (Miss. 1995).

While attorneys are charged with the duty of honorably representing their clients, that duty does not relieve an attorney of his or her duty to make full disclosure to the court. Barrett v. Mississippi Bar, 648 So. 2d 1154 (Miss. 1995).

An attorney's conduct in borrowing money from a nonclient at a usurious interest rate and promising that his wife would repay the debt out of his life insurance proceeds should he die before he repaid the loan and premium did not violate the § 73-3-35 attorney's oath. Watkins v. Mississippi Bar, 589 So. 2d 660 (Miss. 1991).

An attorney's conduct in disbursing a minor client's funds from a judgment directly to the minor's mother without seeking court approval and without taking steps to set up a guardianship to administer the funds for the minor, warranted a public reprimand which would be reduced to a private reprimand because of the attorney's contrition. Mississippi State Bar v. Attorney Y, 585 So. 2d 768 (Miss. 1991).

An attorney's misconduct, which consisted of disobeying the court by dispensing settlement funds without a court order and deceiving the court by filing a false acknowledgment showing that the money had been deposited in the bank as ordered by the court, warranted a 60-day suspension from practice and 180 days probation upon reinstatement to the State Bar. Mississippi State Bar v. Smith, 577 So. 2d 1249 (Miss. 1991).

An attorney's conduct violated § 73-3-35 and certain disciplinary rules of the Code of Professional Responsibility for the Bar, warranting disbarment, where the attorney deposited large contingencies into his personal checking accounts without informing his employer of his receipt of the funds, he used the funds for payment of personal obligations, he showed a lack of remorse, and he consistently maintained that he had committed no wrongdoing or ethical violations until being confronted with ironclad proof, at which time he changed his testimony from that given at the investigatory hearing and previous bar proceedings. Tucker v. Mississippi State Bar, 577 So. 2d 844 (Miss. 1991).

Ninety-day suspension from practice of law was appropriate where attorney had violated various Disciplinary Rules and § 73-3-35, including engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, failing to seek lawful objectives of client through reasonably available means, and failing to carry out contract of employment entered into with client. Foote v. Mississippi State Bar Ass'n, 517 So. 2d 561 (Miss. 1987).

Sanction of disbarment was appropriate where attorney was guilty of violating certain provisions of Code of Professional Responsibility of the Mississippi State Bar and § 73-3-35. Attorney, after agreeing to act as closing attorney in sale of certain real property, failed to make necessary arrangements to pay off first deed of trust on subject property, which resulted in additional interest, and failed to handle client's funds in accordance with applicable Rules of Discipline as adopted by Mississippi Supreme Court for use by members of Mississippi State Bar; there was unrebutted evidence that attorney converted funds to his own use. Sanction less severe than disbarment was not warranted, although there was nothing in record to show any previous ethical violations by attorney, attorney made client whole about 2 weeks after demand, and attorney never attempted to mislead court or bar as to what he did. Foote v. Mississippi State Bar Ass'n, 517 So. 2d 561 (Miss. 1987).

The Mississippi State Bar failed to prove by clear and convincing evidence that attorneys uttered a falsehood in violation of their oaths prescribed in § 73-3-35, where the attorneys' client testified at the disciplinary proceedings that his payment of $35,000 of remaining proceeds of his personal injury settlement to the attorneys was a gift conditioned upon their maintaining confidentiality regarding the gift, where he further testified that his reason for the gift was that he felt guilty that these two attorneys were receiving for their services an amount equal to that of a third attorney, who had since resigned from the firm, and who, in his opinion, had done nothing for him, and where the state bar was attempting to prove that the gift theory was a sham, and that the attorneys had made misrepresentations to the third attorney for the purpose of defrauding him of a one-third share of the payment. Levi v. Mississippi State Bar, 436 So. 2d 781 (Miss. 1983).

RESEARCH REFERENCES

CJS. 7 C.J.S., Attorney and Client §§ 13, 23.

§ 73-3-37. Duties of attorneys.

It is the duty of attorneys:

(1) To support the Constitution and laws of this state and of the United States;

(2) To maintain the respect due to courts of justice and judicial officers;

(3) To employ for the purpose of maintaining the causes confided to them, such means only as are consistent with truth, and never to seek to mislead by any artifice or false statement of the law;

(4) To maintain inviolate the confidence and, at every peril to themselves, to preserve the secrets of their clients;

(5) To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which they are charged;

(6) To encourage neither the commencement nor continuance of an action or proceeding from any motives of passion or personal interest;

(7) Never to reject, for any consideration personal to themselves, the cause of the defenseless or oppressed.

SOURCES: Codes, 1892, § 210; 1906, § 216; Hemingway's 1917, § 190; 1930, § 3693; 1942, § 8665; reenacted without change, Laws, 1983, ch. 457, § 5; reenacted, Laws, 1991, ch. 560, § 5; reenacted without change, Laws, 1999, ch. 372, § 6; reenacted without change, Laws, 2003, ch. 524, § 5; reenacted without change, Laws, 2006, ch. 471, § 5, eff from and after July 1, 2006.

Cross References — Authority of attorney to issue written communications expressing opinion as to fairness, accuracy or reliability of financial statements, and not be in violation of laws regulating practice of certified public accounting, see § 73-33-15.

Lawyers' responsibilities generally, see Miss. Rules of Professional Conduct.

JUDICIAL DECISIONS

1. Construction and application, in general.
2. Practice of law.
3. —Authority of attorney.
4. —Contracts for service.
5. —Contract stipulations for attorney's fees.
6. —Contingent fees.
7. —Attorney's liens.
8. —Compromises.
9. Attorney-client privilege.

1. Construction and application, in general.

In a medical negligence case, and an interlocutory appeal by the medical clinic, the personal representative specifically pled reliance on "former" attorney's advice as an element of the defense to the medical clinic's motion for summary judgment, and as a means to toll the statute of limitations; as such, the personal representative used the attorney-client privilege as a sword, and effectively waived the privilege as it related to the testimony the personal representative gave. Jackson Med. Clinic for Women, P.A. v. Moore, 836 So. 2d 767 (Miss. 2003).

The attorney-client privilege was held to have been waived as to certain documents sought to be discovered by plaintiff in an abuse of process action where it appeared from the record that these documents contained communications between defense attorneys in which the defense proposed to use a representation, made by plaintiff in an earlier action, not as a defense plea, but rather as a means to delay and interrupt the earlier action through use of injunction and contempt proceedings against plaintiff; The court stated that the privilege was waived not because the communication involved planning a tort, but because the privileged matter sought to turn plaintiff's representation from a shield into a sword. Hyde Constr. Co. v. Koehring Co., 455 F.2d 337 (5th Cir. 1972).

In an action involving the income tax liability of his client, the refusal of an attorney, on the ground of privilege, to answer questions as to whether he had brought certain records with him reflecting dates and amounts paid for services rendered to his client, whether he was involved as attorney in a certain purchase, and whether his client gave him a certain sum of money as a down payment involved in the particular purchase, was justified under the provisions of subdivision (4) of this section [Code 1942, § 8665]. United States v. Ladner, 238 F. Supp. 895 (S.D. Miss. 1965).

In action to cancel as cloud on title a deed of trust securing a note claimed by the maker to have been paid in the payee's lifetime, brought against payee's administratrix, in which the maker introduced testimony as to statements by the payee indicating that the note had been paid, payee's attorney, who also was the trustee named in the deed of trust, was not incompetent to testify on behalf of the administratrix as to payee's subsequent instructions in the event that a foreclosure should become necessary. McCaslin v. Willis, 197 Miss. 366, 19 So. 2d 751, 156 A.L.R. 770 (1944).

There is no privileged communication statute as to attorney and client other than this section [Code 1942, § 8665], which requires attorneys "to maintain inviolate the confidence and, at every peril to themselves, to preserve the secrets of their clients." McCaslin v. Willis, 197 Miss. 366, 19 So. 2d 751, 156 A.L.R. 770 (1944).

Attorney is an officer of the court. Ex parte Redmond, 120 Miss. 536, 82 So. 513 (1919).

On the death of one member of a law partnership, the survivor is bound, unless discharged by the client, to complete all executory contracts of the firm, and he cannot exact from the client greater compensation than that which the copartnership was to receive. Clifton v. Clark, Hood & Co., 83 Miss. 446, 36 So. 251, 102 Am. St. R. 458 (1904).

The obligations of an attorney to prosecute a claim against the government in the courts or through such "diplomatic negotiations" as might be deemed by him best for the interests of his client, is not invalid in the absence of proof that the party did not contemplate by the use of the words, "diplomatic negotiations" an improper procedure. Knut v. Nutt, 83 Miss. 365, 35 So. 686, 102 Am. St. R. 452 (1903), aff'd, 200 U.S. 12, 26 S. Ct. 216, 50 L. Ed. 348 (1906).

2. Practice of law.

An attorney has a responsibility to disclose that he or she represents only one of the participants in a multi-person transaction that is fraught with the probability of conflicting interest so that the other participants are able to take reasonable steps to protect themselves. LaBarre v. Gold, 520 So. 2d 1327 (Miss. 1987).

Maker acquiring note not entitled to attorney's fee as against third person assuming payment. Dorman v. McFarlan, 124 Miss. 811, 87 So. 275 (1921).

Attorney retained on a secular day may recover for the value of the retainer although he conferred with his client on Sunday. Bowers v. Jones, 124 Miss. 57, 86 So. 711 (1921).

Judgment obtained by unauthorized appearance by attorney may be enjoined or cancelled. Weems v. Vowell, 122 Miss. 342, 84 So. 249 (1920).

Attorney entitled to retainer though some of services performed on Sunday. Jones v. Brantley, 121 Miss. 721, 83 So. 802, 8 A.L.R. 1353 (1920).

Certain legal services may be performed on Sunday. Jones v. Brantley, 121 Miss. 721, 83 So. 802, 8 A.L.R. 1353 (1920).

Briefs should be confined to the facts and the law of the case and should not contain the personal opinions counsel may entertain of each other. Felder v. Acme Mills, 112 Miss. 322, 73 So. 52 (1916).

Defendant whose position is in fact adverse to that of another defendant cannot act as the latter's counsel, unless, if at all, there is an express showing by the record of authorization to do so. Jenkins v. Barber, 85 Miss. 666, 38 So. 36 (1905).

3. —Authority of attorney.

Unauthorized and unratified agreement on the part of an attorney is not binding on the client. Gambrell v. Southern Moline Plow Co., 103 Miss. 824, 60 So. 1012 (1913).

It is presumed that an attorney assuming to represent a party is authorized to do all acts necessary to the proper conduct of the cause, and a party denying has the burden of showing his want of authority. Grand Court of Calanthe v. Downs, 98 Miss. 740, 53 So. 417 (1910).

Acts of an attorney so far as the procedure in a case is concerned are binding on his client. Scarborough v. Harrison Naval Stores Co., 95 Miss. 497, 51 So. 274 (1910).

4. —Contracts for service.

Where attorney stipulated for fee of 10% for collection of money he was bound thereby and after making collection was not entitled to make a greater charge. Emil Nathan & Co. v. Halsell, 91 Miss. 785, 45 So. 856 (1908).

On the death of one member of a law partnership, if a client of the firm fails to exercise his right to discharge the survivor and permits him to render the services, he will be liable on the contract made with the first just as though neither of the partners had died and the estate of the deceased member will be entitled to recover its just proportion of the fees. Clifton v. Clark, Hood & Co., 83 Miss. 446, 36 So. 251, 102 Am. St. R. 458 (1904).

Where a contract is made for the professional services of a firm of lawyers, and one of them dies before the completion of the service, the client has an option of abrogating the contract by discharging the survivor and paying for the services already rendered. Clifton v. Clark, Hood & Co., 83 Miss. 446, 36 So. 251, 102 Am. St. R. 458 (1904).

Where a contract is made with an attorney-at-law for professional services and it is contracted or understood that he alone is to render the service, or that his skill is depended upon exclusively, the death of the attorney terminated the contract, although he be a member of a copartnership of lawyers. Clifton v. Clark, Hood & Co., 83 Miss. 446, 36 So. 251, 102 Am. St. R. 458 (1904).

A written agreement, made before the allowance of the claim, to pay an attorney an amount equal to one-third of any sum that might be allowed on a claim against the government in consideration of services in securing its allowance is valid. Knut v. Nutt, 83 Miss. 365, 35 So. 686, 102 Am. St. R. 452 (1903), aff'd, 200 U.S. 12, 26 S. Ct. 216, 50 L. Ed. 348 (1906).

Such a fee agreement does not invest the attorney with an interest in, or lien upon the claim. Knut v. Nutt, 83 Miss. 365, 35 So. 686, 102 Am. St. R. 452 (1903), aff'd, 200 U.S. 12, 26 S. Ct. 216, 50 L. Ed. 348 (1906).

An irrevocable power authorizing an attorney to prosecute a claim against the United States before any of the United States courts or any department of the government, made before the allowance of the claim, is void. Knut v. Nutt, 83 Miss. 365, 35 So. 686, 102 Am. St. R. 452 (1903), aff'd, 200 U.S. 12, 26 S. Ct. 216, 50 L. Ed. 348 (1906).

The relation of an attorney to his client is created by contract, and the litigants who have in no way assumed liability for attorney's fees cannot be held therefor because they derived benefits directly or incidentally from the professional services rendered. Rives v. Patty, 74 Miss. 381, 20 So. 862, 60 Am. St. R. 510 (1896).

5. —Contract stipulations for attorney's fees.

Judgment for interest and attorney's fees provided for by note will be entered on appeal where jury in finding for the principal expressly remitted the interest and attorney's fee. Burton v. Eureka Bank, 122 Miss. 393, 84 So. 247 (1920).

Grantees of a trust deed by whose direction the trustee refused tender of the amount due were not entitled to attorney's fees incurred in such tender, where the trust deed did not provide for attorney's fees but a note of which the other parties did not know did call for such fees. Hardin v. Ross, 117 Miss. 186, 78 So. 2 (1918).

However, where an attorney is made a trustee in a deed of trust to be enforced by making sale of the property, he is entitled to retain from the proceeds for his services only a reasonable compensation as trustee, and this, although the note stipulates for the payment of an attorney's fee in case it be collected by an attorney. Elkin v. Rives, 82 Miss. 744, 35 So. 200 (1903).

Where suit was brought on promissory note containing provision for payment of attorney's fee in case of collection by him, and, pending suit, a new note was accepted for the sum demanded, less the attorney's fees, plaintiff could not recover such fees in the suit, even though it was agreed when the new note was given that the question of liability therefor should be tried in that suit. Davis v. Cochran, 76 Miss. 439, 24 So. 168 (1898), aff'd, 76 Miss. 443, 24 So. 906 (1898).

Generally, a stipulation, in a note or other contract, for the payment of attorney's fees incurred in enforcement is valid. Brahan v. First Nat'l Bank, 72 Miss. 266, 16 So. 203 (1894); Duggan v. Champlin, 75 Miss. 441, 23 So. 179 (1898); Millsaps v. Chapman, 76 Miss. 942, 26 So. 369 (1899).

Where a debtor sought relief against a usurious contract which was governed by the laws of another state, a stipulation in the contract for the payment of attorney's fees, in case of litigation or foreclosure, would be disregarded by the chancery court, since the court, in determining the amount to be paid as a condition of relief, was not controlled by the terms of the contract. American Freehold Land & Mtg. Co. v. Jefferson, 69 Miss. 770, 12 So. 464, 30 Am. St. R. 587 (1892).

6. —Contingent fees.

Attorney contracting for contingent fee and taking assignment of portion of right of action is not deprived of right of action thereon because third party, without his knowledge, authority, or connivance, promised benefits to client for placing cause of action with such attorney, if such promise was not disclosed at or before time of making contract. Lamar Hardwood Co. v. Case, 143 Miss. 277, 107 So. 868 (1926).

Settlement for injury with notice of contingent fee contract with attorney for share of recovery does not affect attorney's right to recover on his assignment of part of cause of action. Lamar Hardwood Co. v. Case, 143 Miss. 277, 107 So. 868 (1926).

Parties who have no interest in the proceeds of a claim cannot question the reasonableness of a contingent attorney's fee contract for prosecution and collection thereof. Lay v. Lay, 118 Miss. 549, 79 So. 291 (1918), aff'd, 248 U.S. 24, 39 S. Ct. 13, 63 L. Ed. 103 (1918).

Board of supervisors of the county contracted to pay attorneys' compensation only in event that they successfully resisted payment of county warrants. Judgment in the circuit court was adverse and supervisors over objection of attorneys who had taken appeal, compromised the case; Held, the attorneys were not entitled to compensation. Lamar County v. Tally & Mayson, 116 Miss. 588, 77 So. 299 (1918).

Written contract for services of a lawyer for a contingent fee made by a client thoroughly advised of his rights, will not be vacated on the ground that it was fraudulent or exorbitant, after termination of the suit by acceptance of advantageous compromise at the instance of the client. Humphries v. McLachlan, 87 Miss. 532, 40 So. 151 (1906).

Attorneys in suits for unliquidated damages, brought on an agreement with the plaintiff, operating to transfer to them a share of the sum to be recovered, have an equitable assignment of the recovery to the extent of such share. Harris v. Hazlehurst Oil-Mill & Mfg. Co., 78 Miss. 603, 30 So. 273 (1901).

7. —Attorney's liens.

However, an attorney has no lien upon a judgment for services securing it where he was employed by creditor's attorney and not by creditor. Brahan v. National Life & Accident Ins. Co., 124 Miss. 160, 87 So. 7 (1921).

Contract between sole beneficiary under an unprobated will and an attorney for services for the probate of the will, for one-half of whatever the beneficiary receives under a decree or settlement, does not give the attorney any lien on the estate. Cochran v. Henry, 107 Miss. 233, 65 So. 213 (1914).

Money collected by an attorney on claim due his client for wages, though exempt from execution or garnishment, was not exempt from the attorney's lien. Halsell v. Turner, 84 Miss. 432, 36 So. 531 (1904).

Upon recovery of the proceeds of property through the services of an attorney, he was entitled to have the proceeds charged with a reasonable fee for his services. Tishomingo Sav. Inst. v. Allen, 76 Miss. 114, 23 So. 305 (1898).

8. —Compromises.

Attorney of record has the entire management and control of the pending case, and it should not be dismissed over his protest until he has withdrawn from it, or until the court, upon petition of the party has removed him or has terminated the relation of attorney and client. De Armond v. Fine, 111 Miss. 737, 72 So. 145 (1916).

Contract between attorney and client that the latter should not compromise or settle a pending or prospective lawsuit is unenforcible. Cochran v. Henry, 107 Miss. 233, 65 So. 213 (1914); New Orleans & N.E.R. Co. v. Tally & Mayson, 109 Miss. 393, 69 So. 186 (1915).

A client, without the consent of his attorney, may compromise with the defendants, and dismiss his suit in an action for damages for assault and battery, and this, though he agrees in retaining the attorney not to compromise without his consent. Mosely v. Jamison, 71 Miss. 456, 14 So. 529 (1894).

9. Attorney-client privilege.

In a suicide wrongful death case against a doctor, the court should have allowed the decedent's divorce attorney to testify about conversations with the doctor that concerned the discharge plan and its implementation because plaintiff's counsel voluntarily elicited testimony regarding the substance of privileged conversations and injected a material issue into the case. The discharge plan and its implementation was a material issue before the trial court. Young v. Guild, — So. 2d —, 2008 Miss. LEXIS 548 (Miss. Oct. 30, 2008), substituted opinion at, opinion withdrawn by 7 So. 3d 251, 2009 Miss. LEXIS 193 (Miss. Apr. 23, 2009).

RESEARCH REFERENCES

ALR. Rights and remedies of client as regards papers and documents on which attorney has retained lien. 3 A.L.R.2d 148.

Services in connection with tax matters as practice of law. 9 A.L.R.2d 797.

Prejudicial effect in civil trial of counsel's misconduct in physically exhibiting to jury objects or items not introduced as evidence. 37 A.L.R.2d 662.

Privilege as to communications to attorney in connection with drawing of will. 66 A.L.R.2d 1302.

Persons other than client or attorney affected by, or included within, attorney-client privilege. 96 A.L.R.2d 125.

Attorney-client privilege as affected by communications between several attorneys. 9 A.L.R.3d 1420.

Homicide or assault as ground for disciplinary measures against attorney. 21 A.L.R.3d 887.

Fabrication or suppression of evidence as ground for disciplinary action against attorney. 40 A.L.R.3d 169.

Attorney's negligence in connection with estate, will, or succession matters. 55 A.L.R.3d 977.

Applicability of attorney-client privilege to matters relating to drafting of nonexistent or unavailable nontestamentary documents. 55 A.L.R.3d 1322.

Rights and duties of attorney in a criminal prosecution where client informs him of intention to present perjured testimony. 64 A.L.R.3d 385.

Applicability of attorney-client privilege to evidence or testimony in subsequent action between parties originally represented contemporaneously by same attorney, with reference to communication to or from one party. 4 A.L.R.4th 765.

Modern status of law regarding solicitation of business by or for attorney. 5 A.L.R.4th 866.

Legal malpractice in connection with attorney's withdrawal as counsel. 6 A.L.R.4th 342.

Applicability of attorney-client privilege to communications made in presence of or solely to or by third person. 14 A.L.R.4th 594.

Mental or emotional disturbance as defense to or mitigation of charges against attorney in disciplinary proceeding. 26 A.L.R.4th 995.

Advertising as ground for disciplining attorney. 30 A.L.R.4th 742.

Attorney-client privilege as extending to communications relating to contemplated civil fraud. 31 A.L.R.4th 458.

Privilege as to communications between lay representative in judicial or administrative proceedings and client. 31 A.L.R.4th 1226.

Liability of attorney for improper or ineffective incorporation of client. 40 A.L.R.4th 535.

Assignability of claim for legal malpractice. 40 A.L.R.4th 684.

Disciplinary action against attorney for aiding or assisting another person in unauthorized practice of law. 41 A.L.R.4th 361.

Propriety of governmental eavesdropping on communications between accused and his attorney. 44 A.L.R.4th 841.

Insured-insurer communications as privileged. 55 A.L.R.4th 336.

What constitutes negligence sufficient to render attorney liable to person other than immediate client. 61 A.L.R.4th 464.

Attorney's liability to one other than immediate client, for negligence in connection with legal duties. 61 A.L.R.4th 615.

Incompetence of counsel as ground for relief from state court civil judgment. 64 A.L.R.4th 323.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in matters involving real-estate transactions as ground for disciplinary action — modern cases. 65 A.L.R.4th 24.

Attorney-client privilege: who is "representative of the client" within state statute or rule privileging communications between an attorney and the representative of the client. 66 A.L.R.4th 1227.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in personal injury or property damage actions as ground for disciplinary action — modern cases. 68 A.L.R.4th 694.

Attorney's assertion of retaining lien as violation of ethical code or rules governing professional conduct. 69 A.L.R.4th 974.

Intentional spoliation of evidence, interfering with prospective civil action, as actionable, 70 A.L.R.4th 984.

Involuntary disclosure or surrender of will prior to testator's death. 75 A.L.R.4th 1144.

Ineffective assistance of counsel: use or nonuse of interpreter at prosecution of foreign language speaking defendant. 79 A.L.R.4th 1102.

Admissibility and effect of evidence of professional ethics rules in legal malpractice action. 50 A.L.R.5th 301.

Circumstances under which attorney retains right to compensation notwithstanding voluntary withdrawal from case. 53 A.L.R.5th 287.

Situations in which federal courts are governed by state law of privilege under Rule 501 of the Federal Rules of Evidence. 48 A.L.R. Fed. 259.

Propriety of law firm's representation of client in federal court where lawyer affiliated with firm is disqualified from representing client. 51 A.L.R. Fed. 678.

Attorney's liability under 42 USCS § 1983 for improperly instituting or pursuing legal procedure. 72 A.L.R. Fed. 724.

Am Jur. 7 Am. Jur. 2d, Attorneys at Law § 4.

2 Am. Jur. Pl & Pr Forms (Rev), Attorneys At Law, Forms 1 et seq.

17 Am. Jur. Pl & Pr Forms (Rev), Malicious Prosecution, Forms 1 et seq.

41 Am. Jur. Trials 445, Computer Technology in Civil Litigation.

41 Am. Jur. Trials 683, Computer Research for the Trial Lawyer.

CJS. 7 C.J.S., Attorney and Client §§ 41-43.

Law Reviews. Owens, Wrestling with the Tar Baby: Ethical Obligations of Mississippi Insurance Defense Lawyers, 17 Miss. C. L. Rev. 359, Spring, 1997.

§ 73-3-39. Attorneys of other states may appear and plead in special causes; conditions and limitations.

(1) It is hereby declared to be the public policy of the State of Mississippi that the practice of law before any court or administrative agency is a matter of privilege and not a matter of right.

(2) Subject to the conditions, rules and regulations adopted by the Supreme Court of Mississippi, any attorney or counselor at law of another state, in good professional standing, of good moral character and who is familiar with the ethics, principles, practices, customs and usages of the legal profession in the State of Mississippi may appear and plead in any special cause before any court or administrative agency in this state; provided, however, that in so appearing such attorney or counselor at law shall subject himself to the jurisdiction of the State Board of Bar Admissions and shall consent to the application of the provisions of this article.

(3) Upon petition of two (2) members in good standing of the bar of any county of the State of Mississippi, not members of the same firm, representing that any attorney or counselor at law of another state is appearing in any cause before any court or administrative agency of this state and raising the question of the qualifications of such attorney or counselor at law as set out in subsection (2) of this section or compliance by such attorney with the conditions, rules and regulations adopted by the Supreme Court of Mississippi, the State Board of Bar Admissions shall, or upon its own initiative may, make inquiry as to the professional standing, moral character, familiarity with the ethics, principles, practices, customs and usages of the legal profession in the State of Mississippi of any such attorney or counselor at law of another state and shall inquire as to such attorney's professional standing with his local bar and into the question of whether or not such attorney is familiar with and willing to abide by the ethics, principles, practices, customs and usages of the legal profession in the State of Mississippi.

(4) In conducting the inquiry referred to in the preceding section, the State Board of Bar Admissions shall have authority to require the appearance

of the attorney or counselor at law involved before it and shall have the power to subpoena witnesses and require the production of evidence, oral and documentary, and issue appropriate process therefor, and to do any and all other things which may be required to determine fully and completely the facts as issued before it. After such hearing the State Board of Bar Admissions shall make such determination as, in its opinion and sound discretion, is justified from the evidence before it and may permit or refuse to permit the said attorney or counselor at law to continue to appear and plead in such special cause.

(5) The action or decision of the Board of Bar Admissions in administering this section is hereby declared to be a judicial function and not administrative in character, and appeals from the decision of said board may be taken in accordance with the provisions of Section 11-51-75, Mississippi Code of 1972.

(6) Any attorney or counselor at law who wilfully makes any false or misleading statement to said board touching upon the matters under inquiry shall be guilty of perjury, shall be punished according to law upon conviction thereof, and the judgment of the court imposing such punishment shall, in addition, provide that such attorney or counselor at law shall be perpetually barred from practice before any court or administrative agency of this state.

(7) Any such attorney or counselor at law of another state who shall appear or plead in any court or administrative agency in this state after his qualifications shall have been called into question by the petition hereinbefore mentioned or by the State Board of Bar Admissions acting upon its own initiative and before having obtained an order from the said State Board of Bar Admissions authorizing his appearance shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or imprisoned in the county jail for not more than six (6) months, or both such fine and imprisonment.

SOURCES: Codes, Hutchinson's 1848, ch. 26, art. 7; 1857, ch. 9, art. 5; 1871, § 2248; 1880, § 2399; 1892, § 211; 1906, § 217; Hemingway's 1917, § 191; 1930, § 3694; 1942, § 8666; Laws, 1956, ch. 255, §§ 1-9; reenacted and amended, Laws, 1983, ch. 457, § 6; Laws, 1991, ch. 560, § 6; reenacted without change, Laws, 1999, ch. 372, § 7; reenacted without change, Laws, 2003, ch. 524, § 6; reenacted without change, Laws, 2006, ch. 471, § 6, eff from and after July 1, 2006.

Editor's Note — The language "preceding section" appearing in subsection (4) of this section is apparently incorrect; the language should probably read "preceding subsection".

Cross References — Admission to bar without examination of out-of-state attorneys, see § 73-3-25.

Punishment of person convicted of perjury, see § 97-9-61.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Rules governing admission by comity and reciprocity, see Rules Governing Admission to the Mississippi Bar, Rule VI.

RESEARCH REFERENCES

ALR. Attorney's right to appear pro hac vice in state court. 20 A.L.R.4th 855.

Attorneys: revocation of state court pro hac vice admission. 64 A.L.R.4th 1217.

Am Jur. 7 Am. Jur. 2d, Attorneys at Law § 22.

CJS. 7 C.J.S., Attorney and Client §§ 23-25.

§ 73-3-41. Persons convicted of felonies barred from admission; disbarment of licensed attorneys convicted of felonies.

Every person who has been or shall hereafter be convicted of felony in a court of this or any other state or a court of the United States, manslaughter or a violation of the Internal Revenue Code excepted, shall be incapable of obtaining a license to practice law. Any court of the State of Mississippi in which a licensed attorney shall have been convicted of a felony, other than manslaughter or a violation of the Internal Revenue Code, shall enter an order disbarring the attorney.

SOURCES: Codes, Hutchinson's 1848, ch. 26, art. 3(5); 1857, ch. 9, art. 6; 1871, § 2249; 1880, § 2400; 1892, § 212; 1906, § 218; Hemingway's 1917, § 192; 1930, § 3695; 1942, § 8667; reenacted without change, Laws, 1983, ch. 457, § 7; Laws, 1991, ch. 560, § 7; reenacted without change, Laws, 1999, ch. 372, § 8; reenacted without change, Laws, 2003, ch. 524, § 7; reenacted without change, Laws, 2006, ch. 471, § 7, eff from and after July 1, 2006.

Cross References — Manslaughter, see §§ 97-3-25 through 97-3-47.

Suspensions and disbarments based on certain proceedings, see Mississippi Rules of Discipline, Rule 6.

Standards for disqualification of Bar applicant, see Rules Governing Admission to the Mississippi Bar, Rule VIII, § 6.

Federal Aspects — The Internal Revenue Code, referred to in this section, is codified at 26 USCS §§ 1 et seq.

JUDICIAL DECISIONS

1. Generally.
2. Effect of pardon.
3. Effect of power to suspend sentence.
4. Miscellaneous.

1. Generally.

Mississippi Supreme Court had exclusive inherent jurisdiction over an attorney and his or her license to practice law in Mississippi. Thus, Miss. Code Ann. § 73-3-41, which allowed any court (in the instant case a circuit court), to disbar an attorney, was in direct conflict with the aforementioned rule; however, the substantive and procedural prerequisites of Miss. R. Disc. St. Bar 6 had been satisfied, and therefore, the attorney who was convicted of a felony, was suspended from the practice of law pending his appeal of the criminal conviction. Miss. Bar v. Jackson, 904 So. 2d 109 (Miss. 2004).

Miss Code § 73-3-301, et seq., rather than Miss Code § 73-3-41 and former § 73-3-53, were applicable in an application for reinstatement to the Mississippi State Bar following disbarment on the ground of conviction of federal felonies involving moral turpitude; accordingly, petitioner would be reinstated where the state bar admitted all the averments and facts of the petition, which set out that no claims had been made, or were contemplated, for restitution of money, that he had conducted himself in a manner beyond criticism, that he had been able to obtain employment and had supplied the needs of his family, that he had continued to be active in community and civic activities and had been a good citizen during the period of his disbarment, and that if he was reinstated, he would be a valuable member of the Mississippi State Bar in the future and would conduct himself in such way as to be a credit to the state bar and to the State of Mississippi. Phillips v. Mississippi State Bar, 427 So. 2d 1380 (Miss. 1983).

The conclusion of the Complaint Tribunal that an attorney convicted of nine counts of deceiving and conspiring to defraud the United States government should be suspended from the practice of law pursuant to § 73-3-327 would be vacated and the penalty of disbarment imposed pursuant to the authority of § 73-3-329, without regard to the automatic disbarment provisions of § 73-3-41 and former § 73-3-53, where the charges of which the attorney had been convicted involved moral turpitude. Mississippi State Bar v. Phillips, 385 So. 2d 943 (Miss. 1980).

Where the disbarment of an attorney consists merely in a sentence imposed upon him in criminal proceedings, the circuit and chancery courts are not deprived of jurisdiction to entertain and act upon disbarment proceedings against him, and they may, notwithstanding the judgment and sentence in the criminal case, exercise their inherent power in this area so as to place the results beyond the reach of executive clemency. In re Vance, 275 So. 2d 90 (Miss. 1973).

The order of disbarment of an attorney automatically follows his conviction of a felony. Bennett v. State, 211 So. 2d 520 (Miss. 1968), appeal dismissed, cert. denied, 393 U.S. 320, 89 S. Ct. 555, 21 L. Ed. 2d 515 (1969).

Automatic disbarment under this section [Code 1942, § 8667] is a part of the punishment for the crime. In re Prisock, 244 Miss. 417, 141 So. 2d 715 (1962), error overruled, 244 Miss. 423, 143 So. 2d 434 (1962).

The automatic disbarment under this section [Code 1942, § 8667], consequent upon conviction of a felony, where the attorney's misconduct was within the sphere of his official duties, does not affect the jurisdiction of a chancery court to entertain disbarment proceedings based upon such misconduct. In re Prisock, 244 Miss. 417, 141 So. 2d 715 (1962), error overruled, 244 Miss. 423, 143 So. 2d 434 (1962).

It was within the discretion of a chancery court to either proceed with a hearing of the petition against the accused attorney as filed by the special committee of the local bar or to hold the proceeding in abeyance pending the outcome of the appeal from the previous conviction of the accused in the circuit for the felony with which he was charged. In re Prisock, 244 Miss. 417, 141 So. 2d 715 (1962), error overruled, 244 Miss. 423, 143 So. 2d 434 (1962).

This section [Code 1942, § 8667] makes mandatory the disbarment of a lawyer convicted of embezzling a client's funds. Sherman v. State, 234 Miss. 775, 108 So. 2d 205 (1959).

2. Effect of pardon.

Where the disbarment of an attorney consists merely in a sentence imposed upon him in criminal proceedings, the circuit and chancery courts are not deprived of jurisdiction to entertain and act upon disbarment proceedings against him, and they may, notwithstanding the judgment and sentence in the criminal case, exercise their inherent power in this area so as to place the results beyond the reach of executive clemency. In re Vance, 275 So. 2d 90 (Miss. 1973).

The granting of a pardon to an attorney whose conviction of crime worked automatic disbarment does not preclude the court from disbarring him because of the acts upon which the conviction was based. In re Prisock, 244 Miss. 417, 141 So. 2d 715 (1962), error overruled, 244 Miss. 423, 143 So. 2d 434 (1962).

Full pardon to attorney, after conviction and sentence which included disbarment, held to absolve attorney from all consequences of order of disbarment, entitling him to reinstatement. Ex parte Crisler, 159 Miss. 247, 132 So. 103 (1931).

3. Effect of power to suspend sentence.

The power of a circuit judge to suspend sentence does not empower him to suspend the order of disbarment of an attorney found guilty of a felony, for the disbarment order, though a part of the punishment, is not a part of the sentence. Bennett v. State, 211 So. 2d 520 (Miss. 1968), appeal dismissed, cert. denied, 393 U.S. 320, 89 S. Ct. 555, 21 L. Ed. 2d 515 (1969).

Code 1942, § 4004-23 giving the judges of the circuit and county courts power to suspend sentence and place defendants on probation is not applicable to the matter of mandatory disbarment of an attorney upon his conviction of a felony. Bennett v. State, 211 So. 2d 520 (Miss. 1968), appeal dismissed, cert. denied, 393 U.S. 320, 89 S. Ct. 555, 21 L. Ed. 2d 515 (1969).

4. Miscellaneous.

A lawyer charged with a felony is not entitled on the voir dire examination to advise the jury of the mandatory disbarment required by this section [Code 1942, § 8667]. Bennett v. State, 211 So. 2d 520 (Miss. 1968), appeal dismissed, cert. denied, 393 U.S. 320, 89 S. Ct. 555, 21 L. Ed. 2d 515 (1969).

The mandatory disbarment of a lawyer convicted of a felony has no bearing whatsoever on the guilt or innocence of that lawyer who is charged with the felony. Bennett v. State, 211 So. 2d 520 (Miss. 1968), appeal dismissed, cert. denied, 393 U.S. 320, 89 S. Ct. 555, 21 L. Ed. 2d 515 (1969).

RESEARCH REFERENCES

ALR. State court disciplinary action against attorney for federal income tax conviction. 59 A.L.R.2d 1398.

Pardon as restoring public office or license or eligibility therefor. 58 A.L.R.3d 1191.

Federal income tax conviction as involving moral turpitude warranting disciplinary action against attorney. 63 A.L.R.3d 476.

Federal income tax conviction as constituting nonprofessional misconduct warranting disciplinary action against attorney. 63 A.L.R.3d 512.

Effect of acquittal or dismissal in criminal prosecution as barring disciplinary action against attorney. 76 A.L.R.3d 1028.

Am Jur. 7 Am. Jur. 2d, Attorneys at law §§ 28, 86 et seq.

CJS. 7A C.J.S., Attorney and Client §§ 72-75.

§ 73-3-43. Clerks, sheriffs and other officers prohibited.

It shall not be lawful for a clerk of any court of record or the deputy or assistant of any such clerk, or for any sheriff or his deputy, to exercise the profession or employment of an attorney or counselor at law, or to be engaged in the practice of law, or to receive any fee or reward for any such services rendered during his continuance in such position; and any person offending herein shall be guilty of a misdemeanor, and, upon conviction, to be fined in a sum not exceeding Five Hundred Dollars ($500.00) and be removed from office; but this shall not prohibit the clerk of any court of record or the sheriff of any county from practicing in any of the courts so far as to enable them to bring to conclusion civil cases in which such clerk or sheriff are employed and which are actually filed and pending at the time when such clerk or sheriff is appointed or nominated in a party primary and subsequently elected to office.

SOURCES: Codes, Hutchinson's 1848, ch. 26, art. 3 (14); 1857, ch. 9, art. 4; 1871, § 2247; 1880, § 2402; 1892, § 214; 1906, § 220; Hemingway's 1917, § 194; 1930, § 3697; 1942, § 8669; Laws, 1956, ch. 251; reenacted without change, Laws, 1983, ch. 457, § 8; reenacted, Laws, 1991, ch. 560, § 8; reenacted

without change, Laws, 1999, ch. 372, § 9; reenacted without change, Laws, 2003, ch. 524, § 8; reenacted without change, Laws, 2006, ch. 471, § 8, eff from and after July 1, 2006.

Cross References — Chancery court clerks generally, see §§ 9-5-131 et seq.

Circuit court clerks generally, see §§ 9-7-121 et seq.

Sheriffs generally, see §§ 19-25-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

An injunction was properly granted to restrain a chancery clerk from engaging in the practice of law in violation of this section [Code 1942, § 8669]. Darby v. Mississippi State Bd. of Bar Admissions, 185 So. 2d 684 (Miss. 1966).

A chancery clerk who, through the exercise of discretion and the use of her own knowledge and judgment, drew deeds, deeds of trust, bills of sale, and title certificates to real property was not a mere scrivener but was engaged in the unlawful practice of law, and an injunction was properly granted to restrain her from continuing these activities. Darby v. Mississippi State Bd. of Bar Admissions, 185 So. 2d 684 (Miss. 1966).

This statute does not make it unlawful for one excluded from professional activities to draw his own deed in a single transaction. Continental Oil Co. v. Walker, 238 Miss. 21, 117 So. 2d 333 (1960).

RESEARCH REFERENCES

Am Jur. 48 Am. Jur. Proof of Facts 2d 525, Existence of Attorney-Client Relationship.

§ 73-3-45. Restrictions of certain persons to practice law.

If any justice court judge or the partner in the practice of law of any justice court judge shall appear before a justice court judge of his district as attorney or counsel in any misdemeanor case over which he has jurisdiction, or in any appeal of any such case from the judgment of such officer, or in any certiorari to any such officer for the same, he shall be guilty of a misdemeanor and, on conviction, shall be fined not more than Five Hundred Dollars ($500.00), or be imprisoned not more than six (6) months, or both.

SOURCES: Codes, 1880, § 2403; 1892, § 215; 1906, § 221; Hemingway's 1917, § 195; 1930, § 3698; 1942, § 8670; reenacted and amended, Laws, 1983, ch. 457, § 9; reenacted, Laws, 1991, ch. 560, § 9; reenacted without change, Laws, 1999, ch. 372, § 10; reenacted without change, Laws, 2003, ch. 524, § 9; reenacted without change, Laws, 2006, ch. 471, § 9, eff from and after July 1, 2006.

Cross References — Justice court judges generally, see §§ 9-11-2 et seq.

Municipal police courts generally, see §§ 21-23-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Judge's previous legal association with attorney connected to current case as warranting disqualification. 85 A.L.R.4th 700.

Sufficiency of screening measures (Chinese Wall) designed to prevent disqualification of law firm, member of which is disqualified for conflict of interest. 68 A.L.R. Fed. 687.

§ 73-3-47. Partner of justice court judge prohibited from acting as attorney before such judge; penalty.

If the partner in the practice of law of any justice court judge shall appear before such justice court judge of his district, as attorney or counsel in any case, civil or criminal, or in any appeal from the judgment of such officer, or in any certiorari to such officer, he shall be guilty of a misdemeanor and, on conviction, shall be fined not more than Five Hundred Dollars ($500.00), or be imprisoned not more than six (6) months, or both.

SOURCES: Codes, 1906, § 222; Hemingway's 1917, § 196; 1930, § 3699; 1942, § 8671; Laws, 1904, ch. 138; reenacted and amended, Laws, 1983, ch. 457, § 10; reenacted, Laws, 1991, ch. 560, § 10; reenacted without change, Laws, 1999, ch. 372, § 11; reenacted without change, Laws, 2003, ch. 524, § 10; reenacted without change, Laws, 2006, ch. 471, § 10, eff from and after July 1, 2006.

Cross References — Justice court judges generally, see §§ 9-11-2 et seq.

Municipal police courts generally, see §§ 21-23-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Rules regarding conflicts of interest, see Miss. Rules of Professional Conduct, Rules 1.7 through 1.9.

RESEARCH REFERENCES

ALR. Judge's previous legal association with attorney connected to current case as warranting disqualification. 85 A.L.R.4th 700.

Disqualification of member of law firm as requiring disqualification of entire firm-state cases. 6 A.L.R.5th 242.

§ 73-3-49. Partner of district attorney or county attorney not to defend in certain criminal cases.

Where two (2) or more attorneys at law of this state are associated together in practice as attorneys or counselors at law, and one (1) of such attorneys shall be district attorney of his district or the county attorney of his county, it shall be unlawful for such other attorney, or partner, to appear and defend in any of the courts of that county any person charged with a misdemeanor or felony, and this section shall apply, even though such association may exist only for the transaction of civil business in a particular court.

Any attorney violating this section shall be deemed guilty of a misdemeanor and, on conviction shall be fined in the sum of not less than Ten Dollars ($10.00) nor more than One Hundred Dollars ($100.00), and shall forfeit his license to practice law in this state.

SOURCES: Codes, Hemingway's 1917, §§ 197, 198; 1930, §§ 3700, 3701; 1942, §§ 8672, 8673; Laws, 1912, ch. 155; reenacted without substantive change, Laws, 1983, ch. 457, § 11; reenacted, Laws, 1991, ch. 560, § 11; reenacted without change, Laws, 1999, ch. 372, § 12; reenacted without change, Laws, 2003, ch. 524, § 11; reenacted without change, Laws, 2006, ch. 471, § 11, eff from and after July 1, 2006.

Cross References — Duties of county prosecuting attorney generally, see § 19-23-11.

Restrictions on practice of law by county prosecuting attorney, see § 19-23-13.

Duties of district attorney generally, see § 25-31-11.

Criminal offense of attorney general or district attorney consulting, advising, counselling or representing criminal defendants, see § 97-11-3.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

Rules regarding conflicts of interest, see Miss. Rules of Professional Conduct, Rules 1.7 through 1.9.

JUDICIAL DECISIONS

1. In general.

Code 1972, §§ 19-23-13 and 73-3-49, when read together, effectively disqualify a county attorney from representing a defendant in a criminal case in any county of the state, but the partner of a county attorney may represent a defendant in a criminal proceeding outside the county where the county attorney serves. Frackman v. Deposit Guar. Nat'l Bank, 296 So. 2d 695 (Miss. 1974).

ATTORNEY GENERAL OPINIONS

Section 73-3-49 prohibits an attorney from representing a defendant while that attorney's law partner is serving as county attorney. Williamson, March 1, 1996, A.G. Op. #96-0092.

The statute prohibited a contemplated association between a law firm which included a county attorney and an attorney who was the appointed attorney to represent juveniles in youth court. Evans, Oct. 13, 2000, A.G. Op. #2000-0593.

RESEARCH REFERENCES

ALR. Disqualification of member of law firm as requiring disqualification of entire firm-state cases. 6 A.L.R.5th 242.

Sufficiency of screening measures (Chinese Wall) designed to prevent disqualification of law firm, member of which is disqualified for conflict of interest. 68 A.L.R. Fed. 687.

§ 73-3-51. Attorney general and district attorneys and their law partners not to accept employment from corporations of certain kind.

It shall be unlawful for the Attorney General or any assistant attorney general, or any district attorney, or any attorney at law associated in the practice as attorney or counselor at law with any attorney general or district attorney, to accept employment from or to represent as attorney or counselor at law any railroad corporation, street railway corporation, telephone or telegraph corporation, express company, or other common carrier, or public service corporation whatsoever, and any attorney violating this section shall be guilty of a misdemeanor and, on conviction, shall be fined in a sum not less than Ten Dollars ($10.00) nor more than One Hundred Dollars ($100.00), and shall forfeit his license to practice law in this state.

SOURCES: Codes, Hemingway's 1917, § 199; 1930, § 3702; 1942, § 8674; Laws, 1908, ch. 129; Laws, 1944, ch. 305; reenacted without substantive change, Laws, 1983, ch. 457, § 12; reenacted, Laws, 1991, ch. 560, § 12; reenacted without change, Laws, 1999, ch. 372, § 13; reenacted without change, Laws, 2003, ch. 524, § 12; reenacted without change, Laws, 2006, ch. 471, § 12, eff from and after July 1, 2006.

Cross References — Duty of attorney general to assist and advise public service commission, see § 7-5-49.

Power of railroad corporation to sue and be sued, see § 77-9-145.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Rules regarding conflicts of interest, see Miss. Rules of Professional Conduct, Rules 1.7 through 1.9.

RESEARCH REFERENCES

ALR. Sufficiency of screening measures (Chinese Wall) designed to prevent disqualification of law firm, member of which is disqualified for conflict of interest. 68 A.L.R. Fed. 687.

Am Jur. 7 Am. Jur. 2d, Attorneys at Law §§ 188 et seq.

CJS. 7A C.J.S., Attorney and Client §§ 78-88.

§ 73-3-53. Repealed.

Repealed by Laws of 1983, ch. 457, § 18, eff from and after July 1, 1983.

[Codes, Hutchinson's 1848, ch. 26, art. 3(6); 1857, ch. 9, art. 7; 1871, § 2250; 1880, § 2404; 1892, § 216; 1906, § 223; Hemingway's 1917, § 200; 1930 § 3703; 1942, § 8675]

Editor's Note — Former § 73-3-53 provided for penalties for misconduct of attorneys.

§ 73-3-55. Unlawful to practice law without license; certain abstract companies may certify titles.

It shall be unlawful for any person to engage in the practice of law in this state who has not been licensed according to law. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished in accordance with the provisions of Section 97-23-43. Any person who shall for fee or reward or promise, directly or indirectly, write or dictate any paper or instrument of writing, to be filed in any cause or proceeding pending, or to be instituted in any court in this state, or give any counsel or advice therein, or who shall write or dictate any bill of sale, deed of conveyance, deed of trust, mortgage, contract, or last will and testament, or shall make or certify to any abstract of title to real estate other than his own or in which he may own an interest, shall be held to be engaged in the practice of law. This section shall not, however, prevent title or abstract of title guaranty companies incorporated under the laws of this state from making abstract or certifying titles to real estate where it acts through some person as agent, authorized under the laws of the State of Mississippi to practice law; nor shall this section prevent any abstract company chartered under the laws of the State of Mississippi with a paid-up capital of Fifty Thousand Dollars ($50,000.00) or more from making or certifying to abstracts of title to real estate through the president, secretary or other principal officer of such company.

SOURCES: Codes, 1906, § 230; Hemingway's 1917, § 207; 1930, § 3710; 1942, § 8682; Laws, 1926, ch. 257; reenacted and amended, Laws, 1983, ch. 457, § 13; reenacted, Laws, 1991, ch. 560, § 13; reenacted without change, Laws, 1999, ch. 372, § 14; reenacted without change, Laws, 2003, ch. 524, § 13; reenacted without change, Laws, 2006, ch. 471, § 13, eff from and after July 1, 2006.

Editor's Note — Laws of 1999, ch. 372, § 1, provides:

"SECTION 1. Sections 73-3-2 through 73-3-59, which create the Board of Bar Admissions and prescribe its duties and powers, and which provide certain regulations regarding the practice of law in this state, shall stand repealed as of December 31, 2000."

Laws of 2000, ch. 548, § 1, provides:

"SECTION 1. Sections 73-3-2 through 73-3-59, which create the Board of Bar Admissions and prescribe its duties and powers, and which provide certain regulations regarding the practice of law in this state, shall stand repealed as of December 31, 2003."

Cross References — Injunctions to restrain unlawful practice of profession, see § 73-51-1.

Title insurance generally, see §§ 83-15-1 et seq.

Criminal offense of practicing as an attorney without having obtained license, see § 97-23-43.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Unauthorized practice of law, see Miss. Rules of Professional Conduct, Rule 5.5.

JUDICIAL DECISIONS

1. In general.

Chancery court properly dismissed a first wife's motion to vacate because the wife's attorney was not licensed to practice law in the United States and could not use power of attorney to circumvent the statutory requirements; the attorney was not regularly admitted to practice in the State, was not admitted pro hac vice, and was also the only person who signed the motion to vacate. Fernando v. Sapukotana (In re Estate of Sapukotana), 179 So. 3d 1105 (Miss. 2015).

Chancery court erred in granting summary judgment to a Louisiana attorney in a Mississippi client's legal malpractice action because there was a genuine issue of material fact as to whether the attorney's letter to the client regarding his Mississippi personal injury claim violated Miss. Code Ann. § 73-3-55 and voided the parties' contingency-fee contract; there was evidence the attorney, who was not admitted to practice pro hac vice in Mississippi, appeared before the Mississippi courts for at least two months and gave legal advice to the client. Forbes v. Louis St. Martin, 145 So. 3d 1184 (Miss. Ct. App. Mar. 5, 2013), reversed by 145 So. 3d 1124, 2014 Miss. LEXIS 258 (Miss. May 22, 2014).

Bankruptcy court struck a motion filed by Chapter 7 debtors which asked the court to amend its judgment awarding a creditor $1,948,801 and finding that the debt was nondischargeable under 11 U.S.C.S. § 523(a)(2)(A) and (a)(4) because the motion was ghostwritten by a family member in violation of Fed. R. Bankr. P. 9011 and constituted the unauthorized practice of law under Miss. Code Ann. § 73-3-55. The debtors presented no evidence that they had the ability to prepare the motion independently or that they were responsible for the strategy behind it. Lanier v. Futch (In re Futch), — Bankr. —, 2011 Bankr. LEXIS 1935 (Bankr. S.D. Miss. May 18, 2011).

Disbarred attorney's petition for reinstatement was denied where the attorney worked during disbarment in the law office in which the attorney had formerly practiced; the issue of unauthorized practice of law is a matter to be considered in reinstatement proceedings, and, although a disbarred or suspended lawyer may work as a clerk or paralegal under certain stringent guidelines, such a lawyer may not work for a former firm. In re Parsons, 890 So. 2d 40 (Miss. 2003).

The defendant presented insufficient evidence that a disbarred attorney was engaged in the unauthorized practice of law when he assisted the plaintiff's attorney by being present at depositions, making telephone calls concerning the trial, preparing proposed exhibits for the trial, working with the attorney for the plaintiffs and arranging for a court reporter for the trial, where discovery was conducted on the issue, but the disbarred attorney asserted his Fifth Amendment privilege and refused to answer questions. Holland v. Mayfield, 826 So. 2d 664 (Miss. 1999).

The prohibition against others than members of the bar of the State of Mississippi from engaging in the practice of law is not for the protection of the lawyer against lay competition, but is for the protection of the public. Darby v. Mississippi State Bd. of Bar Admissions, 185 So. 2d 684 (Miss. 1966).

The acts designated in this section [Code 1942, § 8682] as constituting the practice of law are not all exclusive nor all inclusive, and manifestly there may be many others which might be performed by an unlicensed person which might also constitute the practice of law; this section simply provides that the designated acts under the defined circumstances constitute the unlawful practice of law, but it does not encroach on the constitutional power of the judiciary to determine that other acts may also do so. Darby v. Mississippi State Bd. of Bar Admissions, 185 So. 2d 684 (Miss. 1966).

The element of compensation for legal services performed by one not licensed to practice law may be a factor in determining whether specified conduct is unlawful, but it is not controlling, and the character of the service and its relation to the public interest determines its classification, not whether compensation is charged. Darby v. Mississippi State Bd. of Bar Admissions, 185 So. 2d 684 (Miss. 1966).

The state board of bar admissions, joined by an unincorporated county bar association and several individual members of the bar, had the right to bring an action to enjoin a chancery clerk from the unlawful practice of law. Darby v. Mississippi State Bd. of Bar Admissions, 185 So. 2d 684 (Miss. 1966).

A chancery clerk who, through the exercise of discretion and the use of her own knowledge and judgment, drew deeds, deeds of trust, bills of sale, and title certificates to real property was not a mere scrivener but was engaged in the unlawful practice of law, and an injunction was properly granted to restrain her from continuing these activities. Darby v. Mississippi State Bd. of Bar Admissions, 185 So. 2d 684 (Miss. 1966).

ATTORNEY GENERAL OPINIONS

The practice of public adjusting is not per se the unauthorized practice of law. Dale, Sept. 14, 2005, A.G. Op. 05-0481.

RESEARCH REFERENCES

ALR. Services in connection with tax matters as practice of law. 9 A.L.R.2d 797.

Drafting, or filling in blanks in printed forms, of instruments relating to land real-estate agents, brokers, or managers as practice of law. 53 A.L.R.2d 788.

Trust company's acts as fiduciary as practice of law. 69 A.L.R.2d 404.

Title examination activities by lending institution, insurance company, or title and abstract company as illegal practice of law. 85 A.L.R.2d 184.

Sale of books or forms designed to enable layman to achieve legal results without assistance of attorney as unauthorized practice of law. 71 A.L.R.3d 1000.

Propriety and effect of law students acting as counsel in court suit. 3 A.L.R.4th 358.

Right of party litigant to defend or counterclaim on ground that opposing party or his attorney is engaged in unauthorized practice of law. 7 A.L.R.4th 1146.

Layman's assistance to party in divorce proceeding as unauthorized practice of law. 12 A.L.R.4th 656.

Contracts by organizations in business of providing evidence, witness, or research assistance to legal counsel in specific litigation. 15 A.L.R.4th 1255.

Validity and construction of contracts by organizations in business of providing expert witnesses, research assistance, and consultation services to attorneys in specific litigation. 70 A.L.R.5th 513.

What constitutes "unauthorized practice of law" by out-of-state counsel?, 83 A.L.R.5th 497.

What constitutes unauthorized practice of law by paralegal. 109 A.L.R.5th 275.

Unauthorized practice of law-Real estate closings. 119 A.L.R.5th 191.

Drafting of Will or Other Estate-Planning Activities as Illegal or Unauthorized Practice of Law. 25 A.L.R. 6th 323.

Actionability under Federal Civil Rights Acts with respect to proceedings to discipline attorney, to regulate admission to practice of law, or to restrain unauthorized practice of law. 9 A.L.R. Fed. 422.

Am Jur. 7 Am. Jur. 2d, Attorneys at Law §§ 119, 120 et seq.

2 Am. Jur. Pl & Pr Forms (Rev), Attorneys at Law, Forms 351 et seq.

CJS. 7 C.J.S., Attorney and Client §§ 26 et seq.

§ 73-3-57. Unlawful to encourage litigation.

It shall be unlawful for an attorney at law licensed in this or any other state, either before or after action brought, to promise, or give or offer to promise or give, a valuable consideration to any person as an inducement to placing, or in consideration of having placed in his hands, or in the hands of any partnership of which he is a member, a demand of any kind, for the purpose of bringing suit or making claim against another, or to employ a person to search for and procure clients to be brought to such attorney.

SOURCES: Codes, 1906, § 231; Hemingway's 1917, § 208; 1930, § 3711; 1942, § 8683; reenacted without change, Laws, 1983, ch. 457, § 14; reenacted, Laws, 1991, ch. 560, § 14; reenacted without change, Laws, 1999, ch. 372, § 15; reenacted without change, Laws, 2003, ch. 524, § 14; reenacted without change, Laws, 2006, ch. 471, § 14; Laws, 2013, ch. 556, § 2, eff from and after July 1, 2013.

Cross References — Penalty for violation of the provisions of this section, see § 73-3-59.

Criminal offense of conspiring falsely to institute or maintain action or suit, see § 97-1-1.

Criminal offense of champerty and maintenance, see §§ 97-9-11 et seq.

JUDICIAL DECISIONS

1. In general.
2. Attorney advancing "living expenses."

1. In general.

The decisions of courts in other jurisdictions as to what constitutes champerty and maintenance under the common law aid in the proper construction and enforcement of the champerty and maintenance statute. Whelchel v. Stennett, 192 Miss. 241, 5 So. 2d 418 (1942).

An alleged contract, whereby a detective brought a client's case to attorneys, and agreed that, in consideration of their promise to pay him one-third of their contingent fee or a percentage of the amount which might be recovered in the action, the detective would work up and furnish evidence for the plaintiff, and investigate the juries serving at the term of court at which the case should be tried, violated the champerty and maintenance statute. Whelchel v. Stennett, 192 Miss. 241, 5 So. 2d 418 (1942).

Evidence disclosing attorney stirred up litigation and purchased papers coming into employee's hands and wrongfully withheld from employer held to warrant disbarment. In re Latham, 162 Miss. 233, 139 So. 457 (1932).

Contract wherein attorneys assumed to pay expense of contemplated litigation, including cost of expert testimony, held invalid. Harrell v. Daniel & Greene, 151 Miss. 761, 118 So. 899 (1928).

Attorney contracting for contingent fee and taking assignment of portion of right of action is not deprived of right of action thereon because third party, without his knowledge, authority, or connivance, promised benefits to client for placing cause of action with such attorney, if such promise was not disclosed at or before time of making contract. Lamar Hardwood Co. v. Case, 143 Miss. 277, 107 So. 868 (1926).

2. Attorney advancing "living expenses."

Chancery court erred in granting summary judgment to a Louisiana attorney in a Mississippi client's legal malpractice action because there was a genuine issue of material fact as to whether the attorney's conduct in advancing over $ 100,000 to the client for "living expenses" violated Miss. R. Prof. Conduct 1.8(e), Miss. Code Ann. §§ 97-9-11 and 73-3-57, and voided the parties' contingency-fee contract. Forbes v. Louis St. Martin, 145 So. 3d 1184 (Miss. Ct. App. Mar. 5, 2013), reversed by 145 So. 3d 1124, 2014 Miss. LEXIS 258 (Miss. May 22, 2014).

RESEARCH REFERENCES

ALR. Assertion of defense of champerty in action by champertous assignee. 22 A.L.R.2d 1000.

Modern status of law regarding solicitation of business by or for attorney. 5 A.L.R.4th 866.

Am Jur. 7 Am. Jur. 2d, Attorneys at Law §§ 73 et seq.

35 Am. Jur. Trials 225, Physician's Countersuits.

CJS. 7A C.J.S., Attorney and Client § 87.

§ 73-3-59. Unlawful to encourage litigation; penalty.

Any attorney at law who shall violate the provisions of the preceding section shall be guilty of a misdemeanor and shall be removed and disbarred from acting as an attorney at law, and any person who shall, before or after suit brought, receive or agree to receive from any attorney at law, compensation for services in seeking out or placing in the hands of an attorney a demand of any kind for suit or a compromise, shall be guilty of a misdemeanor.

SOURCES: Codes, 1906, § 232; Hemingway's 1917, § 209; 1930, § 3712; 1942, § 8684; reenacted without change, Laws, 1983, ch. 457, § 15; reenacted, Laws, 1991, ch. 560, § 15; reenacted without change, Laws, 1999, ch. 372, § 16; reenacted without change, Laws, 2003, ch. 524, § 15; reenacted without change, Laws, 2006, ch. 471, § 15, eff from and after July 1, 2006.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

The decisions of courts in other jurisdictions as to what constitutes champerty and maintenance under the common law aid in the proper construction and enforcement of the champerty and maintenance statute. Whelchel v. Stennett, 192 Miss. 241, 5 So. 2d 418 (1942).

An alleged contract, whereby a detective brought a client's case to attorneys, and agreed that, in consideration of their promise to pay him one-third of their contingent fee of a percentage of the amount which might be recovered in the action, the detective would work up and furnish evidence for the plaintiff, and investigate the juries serving at the term of court at which the case should be tried, violated the champerty and maintenance statute. Whelchel v. Stennett, 192 Miss. 241, 5 So. 2d 418 (1942).

Evidence disclosing attorney stirred up litigation and purchased papers coming into employee's hands and wrongfully withheld from employer held to warrant disbarment. In re Latham, 162 Miss. 233, 139 So. 457 (1932).

RESEARCH REFERENCES

Am Jur. 35 Am. Jur. Trials 225, Physician's Countersuits.

§§ 73-3-61 and 73-3-63. Repealed.

Repealed by Laws of 1979, ch. 486, § 10, eff from and after November 1, 1979.

§ 73-3-61. [Codes, 1942, § 8662.9; Laws, 1954, ch. 213, § 13]
§ 73-3-63. [En Laws, 1973, ch. 381, § 2]

Editor's Note — Former § 73-3-61 provided that certain sections were to be known as the Bar Standards Law.

Former § 73-3-63 provided for the payment of all examination and license fees received by the board of law admissions to the state treasurer for deposit in a special fund to the credit of the board, and for the expenditure of such fund.

ARTICLE 3.

BAR ASSOCIATION.

SEC.
73-3-101. Bar association created.
73-3-103. All lawyers members.
73-3-105. Bar association; officers; bylaws.
73-3-107. Governing board.
73-3-109. Governing board; quorum.
73-3-111. Secretary; election; term of office; duties.
73-3-113. Secretary to act as treasurer; bond required; accounting of revenues and expenditures in proposed budget; independent audit of association.
73-3-115. Location of office of secretary; meeting of board of commissioners.
73-3-117. Compensation.
73-3-119. Membership required.
73-3-120. Types of membership; active; inactive; continuing legal education requirements.
73-3-121. Change of residence.
73-3-123. Enrollment fees.
73-3-125. Dues; persons exempt or excepted.
73-3-127. Dues; failure to pay after notice.
73-3-129. President; duties.
73-3-131. President; chairman of the board.
73-3-133. Vice-presidents.
73-3-135. Vacancies.
73-3-137. Vacancies; members absent.
73-3-139. Board; election.
73-3-140. Lease of office space.
73-3-141. Duties of board.
73-3-143. Rules of conduct; advisory opinions.
73-3-145. Bar; recommendations; powers.
73-3-147 through 73-3-169. Repealed.
73-3-171. Regulation of fees prohibited.

§ 73-3-101. Bar association created.

The resident lawyers now authorized to practice law in the State of Mississippi are hereby and herewith constituted an association which shall be known as the Mississippi Bar.

SOURCES: Codes, 1942, § 8685; Laws, 1932, ch. 121; reenacted without change, Laws, 1983, ch. 302, § 1; Laws, 1991, ch. 526, § 1; reenacted, Laws, 1992, ch. 515, § 1, eff from and after July 1, 1992.

Cross References — Exemption of funds collected and disbursed by a state agency created under this article from certain provisions governing state agencies, see § 27-104-27.

Provision of specimen copy of legal expense insurance subscriber contract to state bar association, see § 83-49-13.

Requirements for admission to Bar, see Rules Governing Admission to the Mississippi Bar, Rules I through XIV.

JUDICIAL DECISIONS

1. In general.

The State Bar Law does not represent an encroachment by the legislature upon the powers of judiciary, the legislature having the power to establish an integrated bar. Mississippi State Bar v. Collins, 214 Miss. 782, 59 So. 2d 351 (1952).

Under the State Bar Law, the board of commissioners of the state bar could seek to enjoin and prohibit the practice of law by an attorney who had been suspended from membership for non-payment of dues. Mississippi State Bar v. Collins, 214 Miss. 782, 59 So. 2d 351 (1952).

In view of its membership, its functions and the purposes of its creation, the state bar possesses none of the attributes of a private corporation, and the State Bar Law is in no sense a local or private act. Mississippi State Bar v. Collins, 214 Miss. 782, 59 So. 2d 351 (1952).

RESEARCH REFERENCES

ALR. Use of compulsory bar association dues or fees for activities from which particular members dissent. 40 A.L.R.4th 672.

Am Jur. 7 Am. Jur. 2d, Attorneys at Law § 7.

CJS. 7 C.J.S., Attorney and Client § 7.

§ 73-3-103. All lawyers members.

All resident persons now or hereafter admitted to practice law in the state shall be members of this association.

SOURCES: Codes, 1942, § 8686; Laws, 1932, ch. 121; reenacted without change, Laws, 1983, ch. 302, § 2; reenacted, Laws, 1991, ch. 526, § 2; reenacted, Laws, 1992, ch. 515, § 2, eff from and after July 1, 1992.

Cross References — Requirements of admission to Bar, see Rules Governing Admission to the Mississippi Bar, Rules I through XIV.

§ 73-3-105. Bar association; officers; bylaws.

The bar shall elect a president, a first vice president and president-elect, and a second vice president, who shall each serve for a term of one (1) year. None of such officers shall be eligible to succeed himself.

The bar shall adopt bylaws for its government, fixing the term of office for the officers and members of the Board of Commissioners, providing for the times and methods of the election of officers and members of the Board of Commissioners, authorizing sections of the bar, providing for committees through which the activities of the bar would be carried on, prescribing the methods by which the time for the annual meetings of the bar and of the Board of Commissioners shall be set, prescribing the manner in which special meetings of the officers, the board, and the bar may be called and held, authorizing the board to elect an executive committee with a determination of its composition and what powers may be delegated to such executive committee, and covering other proper subjects. Such bylaws shall not be inconsistent with the provisions of this chapter.

SOURCES: Codes, 1942, § 8724; Laws, 1932, ch. 121; Laws, 1977, ch. 333, § 1; reenacted, Laws, 1983, ch. 302, § 3; Laws, 1991, ch. 526, § 3; reenacted, Laws, 1992, ch. 515, § 3, eff from and after July 1, 1992.

§ 73-3-107. Governing board.

The bar shall be controlled and governed by a Board of Commissioners consisting of as many members as shall be established by the bylaws of the bar or any amendments thereto, adopted at an annual meeting of the bar.

SOURCES: Codes, 1942, § 8687; Laws, 1932, ch. 121; Laws, 1975, ch. 919, § 1; Laws, 1977, ch. 333, § 2; reenacted, Laws, 1983, ch. 302, § 4; Laws, 1991, ch. 526, § 4; reenacted, Laws, 1992, ch. 515, § 4, eff from and after July 1, 1992.

Cross References — Board of commissioners acting as agency of court for disciplinary purposes, see § 73-3-305.

§ 73-3-109. Governing board; quorum.

At all meetings of the board of commissioners a majority of the entire membership shall constitute a quorum for action upon any questions that may come before the board except such questions as this article or the by-laws of the organization may require to be passed upon by a larger portion of the membership.

SOURCES: Codes, 1942, § 8690; Laws, 1932, ch. 121; reenacted without change, Laws, 1983, ch. 302, § 5; reenacted, Laws, 1991, ch. 526, § 5; reenacted, Laws, 1992, ch. 515, § 5, eff from and after July 1, 1992.

§ 73-3-111. Secretary; election; term of office; duties.

A secretary, who may be designated as executive director, shall be elected by the Board of Commissioners and shall hold office for one (1) year.

The secretary shall keep and maintain rolls which shall contain the name and place of residence of every lawyer in the state. He may adopt such means as he thinks best to make the rolls accurate and complete. There shall be made a separate roll for each circuit court district.

The secretary shall keep minutes of all meetings of the Board of Commissioners and such minutes, signed by the chairman and secretary, shall be the evidence of the proceedings had and actions taken by the board. He shall also keep the minutes of each meeting of the bar, which minutes signed by him and by the presiding officer shall be evidence of the proceedings had and actions taken by the bar.

SOURCES: Codes, 1942, §§ 8691, 8693; Laws, 1932, ch. 121; Laws, 1976, ch. 339; reenacted, Laws, 1983, ch. 302, § 6; Laws, 1991, ch. 526, § 6; reenacted, Laws, 1992, ch. 515, § 6, eff from and after July 1, 1992.

§ 73-3-113. Secretary to act as treasurer; bond required; accounting of revenues and expenditures in proposed budget; independent audit of association.

The secretary shall also perform the duties of treasurer. He shall make bond for the safe handling of all funds for which he may become responsible, the bond to be in such penalty, with such sureties, and conditioned as the Board of Commissioners may require. Annually, and not less than thirty (30) days in advance of the date the Board of Commissioners is to consider the proposed budget of the bar for the next fiscal year, the secretary shall publish in an official publication of the bar a detailed accounting of all projected revenues and each item of expenditure in the proposed budget. Items of expenditure relating to disciplinary functions of the bar shall appear separately from those relating to nondisciplinary functions. In addition, the secretary shall annually cause to be made an independent audit by a certified public accountant of all receipts, expenditures and funds under the control of the bar and shall publish such audit in an official publication of the bar.

SOURCES: Codes, 1942, § 8692; Laws, 1932, ch. 121; reenacted and amended, Laws, 1983, ch. 302, § 7; Laws, 1991, ch. 526, § 7; reenacted, Laws, 1992, ch. 515, § 7, eff from and after July 1, 1992.

Cross References — Exemption of funds collected by the bar association from provisions governing reports of state agencies, see § 27-104-27.

§ 73-3-115. Location of office of secretary; meeting of board of commissioners.

The secretary shall maintain his office at the seat of government. But the meetings of the Board of Commissioners shall be at such places as the board may select from time to time or as may be designated in calls made as herein authorized. The meetings of the bar shall be held at such places as the bar may from time to time select. The secretary shall attend all meetings of the board and all meetings of the bar.

SOURCES: Codes, 1942, § 8694; Laws, 1932, ch. 121; Laws, 1970, ch. 352, § 1; reenacted without change, Laws, 1983, ch. 302, § 8; Laws, 1991, ch. 526, § 8; reenacted, Laws, 1992, ch. 515, § 8, eff from and after July 1, 1992.

§ 73-3-117. Compensation.

The secretary shall receive a salary in such amount and payable in such manner as the Board of Commissioners may prescribe from time to time. No other officer shall be paid a salary. But the traveling expenses of members of the board attending meetings of the board and such expenses of committees making trips on business of the bar shall be paid.

SOURCES: Codes, 1942, § 8695; Laws, 1932, ch. 121; reenacted without change, Laws, 1983, ch. 302, § 9; Laws, 1991, ch. 526, § 9; reenacted, Laws, 1992, ch. 515, § 9, eff from and after July 1, 1992.

§ 73-3-119. Membership required.

Enrollment on the list of members of the bar and the payment of annual enrollment fees as required hereby shall be prerequisites to the continued practice by any lawyer already admitted and to the engaging in the practice by persons hereafter admitted. The date on which the provisions of this section shall become operative will be determined in the manner hereinafter provided.

SOURCES: Codes, 1942, § 8696; Laws, 1932, ch. 121; reenacted without change, Laws, 1983, ch. 302, § 10; Laws, 1991, ch. 526, § 10; reenacted, Laws, 1992, ch. 515, § 10, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. 2d, Attorneys at Law § 7.

CJS. 7 C.J.S., Attorney and Client § 7.

§ 73-3-120. Types of membership; active; inactive; continuing legal education requirements.

Members of the bar shall be divided into active and inactive membership classes which shall be defined as follows:

(a) "Active member" means any person admitted to practice law in this state and who is engaged in the practice of law in this state. Except as otherwise provided in Section 73-3-125, all active members shall be entitled to vote and hold office in the bar.

(b) "Inactive member" means any member, in good standing, who is not engaged in the practice of law in this state. A person may, upon written request, be enrolled as an inactive member. Inactive members shall not be entitled to vote and hold office in the bar.

As used in this section, the "practice of law" shall include any person holding himself out as a practicing attorney or occupying any position in which he may be called upon to give legal advice or counsel or to examine the law or to pass upon the legal effect of any act, document or law.

The Mississippi Bar shall promulgate rules and regulations regarding continuing legal education requirements between active and inactive status.

SOURCES: Laws, 1987, ch. 442, § 1; Laws, 1991, ch. 526, § 11; reenacted, Laws, 1992, ch. 515, § 11, eff from and after July 1, 1992.

JUDICIAL DECISIONS

1. Right to counsel.

Defendant's conviction for felony child abuse was appropriate because his claim that his attorney was an inactive member of the bar and that defendant was unaware of the attorney's status change, did not deprive defendant of his right to counsel. There was no question that the attorney was engaged in the practice of law during his representation of defendant and the attorney's recent status change with The Mississippi Bar was harmless error because defendant failed to show any prejudice as a result of the attorney's status and because such status had no effect on the jury's determination of guilt. Henry v. State, 40 So. 3d 621 (Miss. Ct. App. 2010).

§ 73-3-121. Change of residence.

Any lawyer changing his residence from one circuit to another shall promptly notify the secretary who shall make the changes on his rolls to show such person's name on the roll of the proper district.

SOURCES: Codes, 1942, § 8697; Laws, 1932, ch. 121; reenacted without change, Laws, 1983, ch. 302, § 11; reenacted, Laws, 1991, ch. 526, § 12; reenacted, Laws, 1992, ch. 515, § 12, eff from and after July 1, 1992.

§ 73-3-123. Enrollment fees.

(1) Each member of the bar shall, unless exempt by virtue of Section 73-3-125 and Section 33-1-39, pay enrollment fees each year in an amount as established by the board of commissioners, but not to exceed the sum of Four Hundred Dollars ($400.00)for those members admitted to practice law for three (3) years or more; and Two Hundred Sixty Dollars ($260.00) for those members admitted to practice law for one (1) year, but less than three (3) years; and Two Hundred Dollars ($200.00) for those members admitted to practice law less than one (1) year; and Fifty Dollars ($50.00) for those members on inactive status. All enrollment fees shall be paid for the same period, that is, for the period of one (1) year beginning on the day and month to be determined as provided in Section 73-3-127. The enrollment fees shall be paid to the secretary of the bar.

(2) The Board of Bar Commissioners shall increase enrollment fees within the limitations imposed by subsection (1) of this section by not more than the minimum increment necessary to cover the annual expenses of The Mississippi Bar.

SOURCES: Codes, 1942, § 8699; Laws, 1932, ch. 121; Laws, 1952, ch. 241; Laws, 1960, ch. 289; Laws, 1968, ch. 374, § 1; Laws, 1973, ch. 479, § 1; Laws, 1976, ch. 482; Laws, 1981, ch. 485, § 1; reenacted and amended, Laws, 1983, ch. 302, § 12; Laws, 1985, ch. 333; Laws, 1987, ch. 442, § 2; Laws, 1991, ch. 526, § 13; reenacted, Laws, 1992, ch. 515, § 13; Laws, 1995, ch. 556, § 2; Laws, 2005, ch. 415, § 1; Laws, 2007, ch. 309, § 4, eff from and after passage (approved Mar. 8, 2007.)

Cross References — Extension of license issued active military personnel for period of time following return from federal active duty, see § 33-1-39.

RESEARCH REFERENCES

ALR. Use of compulsory bar association dues or fees for activities from which particular members dissent. 40 A.L.R.4th 672.

Validity of state or municipal tax or license fee upon occupation of practicing law. 50 A.L.R.4th 467.

§ 73-3-125. Dues; persons exempt or excepted.

All lawyers over the age of seventy-five (75) years, and the judges of the Supreme Court, Court of Appeals and circuit, chancery and county judges, United States magistrates, judges of the bankruptcy courts, the judges of the federal courts, and federal administrative law judges are exempt from the payment of enrollment fees. Lawyers over the age of seventy-five (75) years and judges of the classes enumerated in this section shall be active members except that no judge shall be eligible to membership on the Board of Commissioners. Lawyers who have retired from the practice of law because of age, serious illness or permanent disability may be placed on inactive status and shall be exempt from the payment of enrollment fees.

SOURCES: Codes, 1942, §§ 8698, 8700; Laws, 1932, ch. 121; Laws, 1942, ch. 186; Laws, 1954, ch. 235; Laws, 1981, ch. 485, § 2; reenacted, Laws, 1983, ch. 302, § 13; Laws, 1987, ch. 442, § 3; Laws, 1991, ch. 526, § 14; reenacted, Laws, 1992, ch. 515, § 14; Laws, 2000, ch. 340, § 1; Laws, 2003, ch. 333, § 1, eff from and after July 1, 2003.

Cross References — Applicability of this section to active members of bar association, see § 73-3-120.

Amount of annual dues payable by all members of the bar association except those exempted by this section, see § 73-3-123.

RESEARCH REFERENCES

ALR. Validity of state or municipal tax or license fee upon occupation of practicing law. 50 A.L.R.4th 467.

§ 73-3-127. Dues; failure to pay after notice.

Any member failing to pay any enrollment fees within sixty (60) days after the same become due shall be considered delinquent and shall be given written notice of his delinquency mailed to him by United States mail, addressed to his last known address. If the delinquent fails to pay such enrollment fees within thirty (30) days after written notice of delinquency, he shall stand suspended from membership in the Mississippi Bar. It shall be the duty of the secretary, upon any member's becoming suspended as above stated, to notify the delinquent in writing by United States certified mail of his suspension, and to notify the courts of the county of his last known address of such fact, viz; the circuit court, the chancery court and the county court, if there be a county court, by mailing such notice to the presiding judge and to the clerk of such court. Any member shall be reinstated upon payment of delinquent enrollment fees and a penalty in an amount equal to one-half (½) of the delinquent enrollment fees. The secretary, upon such payment, shall forthwith notify the courts above-mentioned of such fact and the clerks thereof shall file and preserve such notice.

SOURCES: Codes, 1942, § 8710; Laws, 1932, ch. 121; Laws, 1962, ch. 332; reenacted without change, Laws, 1983, ch. 302, § 14; Laws, 1985, ch. 334; Laws, 1987, ch. 442, § 4; Laws, 1991, ch. 526, § 15; reenacted, Laws, 1992, ch. 515, § 15, eff from and after July 1, 1992.

Cross References — Payment of annual dues for the period determined by this section, see § 73-3-123.

JUDICIAL DECISIONS

1. Imposition of discipline when attorney is under suspension.

In a reciprocal disciplinary proceeding in which an attorney had been suspended in Mississippi for failing to pay his enrollment fees, the attorney was still subject to the disciplinary jurisdiction of the Mississippi Supreme Court, and, pursuant to Miss. R. Disc. St. Bar 1, the Mississippi Supreme Court had exclusive and inherent jurisdiction of matters pertaining to attorney discipline. Miss. Bar v. Inserra, 38 So. 3d 605 (Miss. 2009).

Where the attorney was under suspension in Mississippi, pursuant to Miss. Code Ann. § 73-3-127, for failure to pay bar enrollment fees, the Mississippi Supreme Court imposed reciprocal discipline in the form of a public reprimand against the attorney that was to become effective in the event that the attorney sought reinstatement. Miss. Bar v. Inserra, 855 So. 2d 447 (Miss. 2003).

RESEARCH REFERENCES

ALR. Validity of state or municipal tax or license fee upon occupation of practicing law. 50 A.L.R.4th 467.

Reciprocal Discipline of Attorneys — Commingling or Other Mishandling of Client Funds. 45 A.L.R.6th 175.

§ 73-3-129. President; duties.

The president shall preside at all meetings of the bar, and shall have such duties as the bar may by its bylaws prescribe. In his absence, or in case of his inability to perform his duties they shall devolve upon the first vice president; and in the absence or inability to act of the first vice president the duties of the president shall be performed by the second vice president.

SOURCES: Codes, 1942, § 8701; Laws, 1932, ch. 121; reenacted without change, Laws, 1983, ch. 302, § 15; Laws, 1991, ch. 526, § 16; reenacted, Laws, 1992, ch. 515, § 16, eff from and after July 1, 1992.

§ 73-3-131. President; chairman of the board.

The president shall be a member and the chairman of the board of commissioners. In case he is absent from any meeting of the board, the vice president and president-elect shall preside; and in case the vice president and president-elect is absent from any meeting of the board, some other member of the board shall be selected by the members in attendance to preside at that meeting.

SOURCES: Codes, 1942, § 8702; Laws, 1932, ch. 121; Laws, 1977, ch. 333, § 3; reenacted and amended, Laws, 1983, ch. 302, § 16; reenacted, Laws, 1991, ch. 526, § 17; reenacted, Laws, 1992, ch. 515, § 17, eff from and after July 1, 1992.

§ 73-3-133. Vice-presidents.

The vice president and president-elect and the second vice president shall be members of the board of commissioners.

SOURCES: Codes, 1942, § 8703; Laws, 1932, ch. 121; Laws, 1977, ch. 333, § 4; reenacted and amended, Laws, 1983, ch. 302, § 17; reenacted, Laws, 1991, ch. 526, § 18; reenacted, Laws, 1992, ch. 515, § 18, eff from and after July 1, 1992.

§ 73-3-135. Vacancies.

Vacancies in any office, including the office of commissioner, shall be filled by the board of commissioners and any person so elected by the board of commissioners to fill a vacancy shall hold for the balance of the term of his immediate predecessor in office.

SOURCES: Codes, 1942, § 8704; Laws, 1932, ch. 121; reenacted without change Laws, 1983, ch. 302, § 18; reenacted, Laws, 1991, ch. 526, § 19; reenacted, Laws, 1992, ch. 515, § 19, eff from and after July 1, 1992.

§ 73-3-137. Vacancies; members absent.

If any member of the board shall be absent from three successive meetings thereof, unless the reason for his absence shall be temporary illness, the board may declare his office vacant and proceed to fill it as provided in the last preceding section.

SOURCES: Codes, 1942, § 8705; Laws, 1932, ch. 121; reenacted without change, Laws, 1983, ch. 302, § 19; reenacted, Laws, 1991, ch. 526, § 20; reenacted, Laws, 1992, ch. 515, § 20, eff from and after July 1, 1992.

§ 73-3-139. Board; election.

The membership of the bar shall establish by the adoption of bylaws and amendments thereto at any annual meeting of the bar the time, method and procedures for the election of officers and members of the board. The names of those persons nominated by any method other than by petition of the general membership shall be published in an official publication of the bar at least thirty (30) days in advance of the deadline for nominations by petition of the general membership to be filed, and the bylaws of the bar shall provide in addition to any other method for the nomination of officers and members of the board the manner and procedure by which the general membership of the bar may make nominations by petition. All bylaws of the bar in existence at the time of the adoption of this section shall continue in full force and effect, until such time as such bylaws may be amended by the membership of the bar in accordance with the provisions of the bar bylaws.

SOURCES: Codes, 1942, § 8706; Laws, 1932, ch. 121; Laws, 1977, ch. 333, § 5; reenacted and amended, Laws, 1983, ch. 302, § 20; Laws, 1991, ch. 526, § 21; reenacted, Laws, 1992, ch. 515, § 21, eff from and after July 1, 1992.

§ 73-3-140. Lease of office space.

The Board of Commissioners, any officer or the Executive Director of the Mississippi Bar shall not be authorized to lease any office space for the use of the Mississippi Bar if such space is being leased for an annual amount in excess of the annual amount paid by the State Supreme Court for its office space. The lease of any office space by the Board of Commissioners, an officer or the Executive Director of the Mississippi Bar for the use of the Mississippi Bar must be approved by the Department of Finance and Administration. The bylaws of the bar shall not be in conflict with the provisions of this section. The provisions of this section shall not apply to any lease existing as of July 1, 1991.

SOURCES: Laws, 1991, ch. 526, § 22; reenacted, Laws, 1992, ch. 515, § 22, eff from and after July 1, 1992.

§ 73-3-141. Duties of board.

The Mississippi Bar shall be governed by the Board of Commissioners which shall have the powers and duties in this article conferred and which shall be charged with the executive functions of the bar and with the duty to enforce the provisions of this article. But the Board of Commissioners shall observe general rules, not in conflict with the provisions of this article, adopted in the form of bylaws or otherwise by the bar.

SOURCES: Codes, 1942, § 8707; Laws, 1932, ch. 121; reenacted without change, Laws, 1983, ch. 302, § 21; Laws, 1991, ch. 526, § 23; reenacted, Laws, 1992, ch. 515, § 23, eff from and after July 1, 1992.

§ 73-3-143. Rules of conduct; advisory opinions.

(1) The board shall, subject to the approval of the justices of the Supreme Court, formulate reasonable rules governing the conduct of all persons admitted to practice.

(2) The Board of Commissioners shall render advisory opinions, upon the written request of any member of the bar, as to the validity or propriety of any proposed act or course of conduct.

SOURCES: Codes, 1942, § 8708; Laws, 1932, ch. 121; Laws, 1974, ch. 566, § 28; reenacted, Laws, 1983, ch. 302, § 22; Laws, 1991, ch. 526, § 24; reenacted, Laws, 1992, ch. 515, § 24, eff from and after July 1, 1992.

JUDICIAL DECISIONS

1. In general.

Statutes, regulating the bar and providing for procedure against members for misconduct, are generally regarded as prescribing a preferential method of procedure, which the court may, and in most cases ought, as a matter of discretion, to require to be followed but which is not exclusive; such statutes are not restrictive of the inherent powers which reside in courts to inquire into the conduct of their own officers, and to discipline them for misconduct. In re Higgins, 194 Miss. 838, 13 So. 2d 829 (1943).

The fact that there was not a quorum of the bar commissioners present at meeting when disbarment proceedings were directed to be instituted against erring attorney did not invalidate such proceedings, since, apart from, and independent of, the statutes regulating the bar and the conduct of its members, the superior courts of this state have inherent power derived from their constitutional establishment to discipline members of the bar for misconduct. In re Higgins, 194 Miss. 838, 13 So. 2d 829 (1943).

§ 73-3-145. Bar; recommendations; powers.

(1) It shall be the duty of the Mississippi Bar, by and through its president, to recommend to the State Legislature such legislation relating to the courts, to matters of pleading, practice and procedure, and any other legislation which in its judgment will improve the courts and the law, or render the members of the bar more efficient as ministers of justice and the courts more efficient as instrumentalities for its attainment.

(2) The bar shall have the right to make rules and bylaws not in conflict with any of the terms of this article concerning the selection and tenure of its officers and committees and their powers and duties, and generally for the control and regulation of the business of the board and of the bar.

(3) The bar shall have the authority to hold and conduct educational and social meetings and activities among the members of the bar, to publish journals and generally to do such things as in their judgment may tend to improve the educational and ethical standing of the bench and bar.

SOURCES: Codes, 1942, § 8709; Laws, 1932, ch. 121; reenacted without change, Laws, 1983, ch. 302, § 23; Laws, 1991, ch. 526, § 25; reenacted, Laws, 1992, ch. 515, § 25, eff from and after July 1, 1992.

§§ 73-3-147 through 73-3-169. Repealed.

Repealed by Laws of 1974, ch. 566, § 29, eff from and after July 1, 1974.

§ 73-3-147. [Codes, 1942, § 8711; Laws, 1932, ch. 121]
§ 73-3-149. [Codes, 1942, § 8712; Laws, 1932, ch. 121]
§ 73-3-151. [Codes, 1942, § 8713, Laws, 1932, ch. 121]
§ 73-3-153. [Codes, 1942, § 8714; Laws, 1932, ch. 121]
§ 73-3-155. [Codes, 1942, § 8715; Laws, 1932, ch. 121]
§ 73-3-157. [Codes, 1942, § 8716; Laws, 1932, ch. 121]

§ 73-3-159. [Codes, 1942, § 8717; Laws, 1932, ch. 121]
§ 73-3-161. [Codes, 1942, § 8718; Laws, 1932, ch. 121]
§ 73-3-163. [Codes, 1942, § 8720; Laws, 1932, ch. 121]
§ 73-3-165. [Codes, 1942, § 8721; Laws, 1932, ch. 121]
§ 73-3-167. [Codes, 1942, § 8722; Laws, 1932, ch. 121]
§ 73-3-169. [Codes, 1942, § 8723; Laws, 1932, ch. 121]

Editor's Note — Laws of 1974, ch. 566, § 30, which repealed this section, effective July 1, 1974, provides as follows:

"SECTION 30. Nothing in this act shall be construed to defeat or affect in any manner whatsoever any proceeding, appeal or petition for reinstatement concerning any member or former member of the Mississippi State Bar commenced prior to the effective date of this act under the authority of the statutes hereby repealed."

Former § 73-3-147 provided for disbarment proceedings. Matters relating to the suspension or disbarment of attorneys at law may now be found in §§ 73-3-301 et seq.

Former § 73-3-149 provided for suspension from practice. Matters relating to the suspension or disbarment of attorneys at law may now be found in §§ 73-3-301 et seq.

Former § 73-3-151 provided for reprimands. Matters relating to the suspension or disbarment of attorneys at law may now be found in §§ 73-3-301 et seq.

Former § 73-3-153 provided for reinstatement to practice. Matters relating to the suspension or disbarment of attorneys at law may now be found in §§ 73-3-301 et seq.

Former § 73-3-155 provided that the disbarment and reinstatement proceedings be recorded. Matters relating to the suspension or disbarment of attorneys at law may now be found in §§ 73-3-301 et seq.

Former § 73-3-157 conferred jurisdiction on the circuit and chancery courts to hear matters relating to disbarment. Matters relating to the suspension or disbarment of attorneys at law may now be found in §§ 73-3-301 et seq.

Former § 73-3-159 provided for notice of disbarment proceedings. Matters relating to the suspension or disbarment of attorneys at law may now be found in §§ 73-3-301 et seq.

Former § 73-3-161 provided for the disqualification of members of the board of commissioners in matters dealing with complaints made against board members. Matters relating to the suspension or disbarment of attorneys at law may now be found in §§ 73-3-301 et seq.

Former § 73-3-163 dealt with how evidence was to be procured in disbarment proceedings. Matters relating to the suspension or disbarment of attorneys at law may now be found in §§ 73-3-301 et seq.

Former § 73-3-165 stated the rights of the accused in matters relating to disbarment proceedings. Matters relating to the suspension or disbarment of attorneys at law may now be found in §§ 73-3-301 et seq.

Former § 73-3-167 provided for the manner in which subpoenas were to be served in disbarment proceedings. Matters relating to the suspension or disbarment of attorneys at law may now be found in §§ 73-3-301 et seq.

Former § 73-3-169 provided for the payment of fees to witnesses in disbarment proceedings. Matters relating to the suspension or disbarment of attorneys at law may now be found in §§ 73-3-301 et seq.

§ 73-3-171. Regulation of fees prohibited.

The board of commissioners shall have no authority to regulate the fees or charges of lawyers for the rendition of their professional services. Nor shall it in any way undertake to regulate such fees or charges.

SOURCES: Codes, 1942, § 8719; Laws, 1932, ch. 121; reenacted, Laws, 1991, ch. 526, § 26; reenacted, Laws, 1992, ch. 515, § 26, eff from and after July 1, 1992.

JUDICIAL DECISIONS

1. In general.

An attorney's fee award to a judgment creditor of ⅓ the amount of the indebtedness in collection matters is reasonable. Dynasteel Corp. v. Aztec Indus., Inc., 611 So. 2d 977 (Miss. 1992).

While Mississippi Code § 73-3-171 prohibits the regulation of attorney fees by the Board of Commissioners, it does not restrict the power of the Supreme Court to discipline attorneys for unprofessional and unethical conduct based upon violation of disciplinary rules, such as Code of Professional Responsibility DR 2-106. Mississippi State Bar Ass'n v. Mississippi Att'y, 489 So. 2d 1081 (Miss. 1986).

RESEARCH REFERENCES

ALR. Attorney's assertion of retaining lien as violation of ethical code or rules governing professional conduct. 69 A.L.R.4th 974.

Am Jur. 3 Am. Jur. Legal Forms 2d, Attorneys at Law §§ 30:151 et seq. (compensation of attorneys).

Lawyers' Edition. Governmental regulation of attorneys' fees as violating due process under Federal Constitution's Fifth or Fourteenth Amendment — Supreme Court cases. 108 L. Ed. 2d 1034.

ARTICLE 5.

LAW STUDENTS.

SEC.
73-3-201. Short title.
73-3-203. Law student program in public interest.
73-3-205. Definitions; qualifications.
73-3-207. Authorization to practice law; conditions; compensation.
73-3-209. Oath.
73-3-211. Order of judge administering oath; duration of authority to practice law.

§ 73-3-201. Short title.

This article shall be known as "The Law Student Limited Practice Act."

SOURCES: Codes, 1942, § 8684-01; Laws, 1971, ch. 466, § 1; Laws, 1996, ch. 532, § 1, eff from and after July 1, 1996.

§ 73-3-203. Law student program in public interest.

It is in the public interest to encourage the establishment and operation of effective legal internship and clinical legal education programs by law schools in this state and the utilization of services of law students in such programs as a form of legal education.

SOURCES: Codes, 1942, § 8684-02; Laws, 1971, ch. 466, § 2; Laws, 1996, ch. 532, § 2, eff from and after July 1, 1996.

§ 73-3-205. Definitions; qualifications.

For purposes of this article, the following words and terms shall have the following meanings:

(a) "Law student" means a law student regularly enrolled in a law school in this state who (i) if enrolled and assigned in a legal internship program, has completed two-thirds (⅔) of the required number of hours for graduation from that school, or (ii) if enrolled in a clinical legal education course, has completed one-half (½) of the required number of hours for graduation from that school.

(b) "Legal internship program" means a program or course for academic credit which is established by a law school of this state and directed or generally supervised by a member of the faculty or staff of the school in which law students are assigned to work under the supervision of supervising attorneys.

(c) "Supervising attorneys" means attorneys who: (i) are licensed to practice law in Mississippi and who are public officials, or (ii) are licensed to practice law in Mississippi and have actively practiced more than three (3) years in public offices, agencies or departments, in public defender offices, or in nonprofit or publicly funded legal services or agencies and to whom students are assigned as interns.

(d) "Clinical legal education course" means a course for academic credit which is established by a law school in this state in which law students assist a clinical teacher in providing legal services to clients under the direct and regular personal supervision of the clinical teacher.

(e) "Clinical teacher" means a member of the faculty or staff of a law school in this state who teaches and supervises law students in a clinical legal education course and is licensed to practice law in Mississippi.

SOURCES: Codes, 1942, § 8684-03; Laws, 1971, ch. 466, § 3; Laws, 1996, ch. 532, § 3, eff from and after July 1, 1996.

§ 73-3-207. Authorization to practice law; conditions; compensation.

A law student enrolled in a legal internship program or a clinical legal education course is authorized to engage in limited practice in the state and federal courts of this state with the following conditions and limitations:

(a) The law student will petition the court and take the oath, as prescribed in this article, and be admitted to limited practice by an order of a judge of a circuit or chancery court, as prescribed in this article, in the district in which the student will practice, or by an order of a United States District Judge or United States Magistrate Judge of the United States District Court for the Southern District of Mississippi or the United States District Court for the Northern District of Mississippi.

(b) Upon filing the oath and order in the office of the clerk of that court, the law student will be authorized to engage in limited practice in any state or federal court in the state subject to any controls and limitations ordered by the judge of the court.

(c) The authority for limited practice by a law student will continue during any regular school terms in which the law student is enrolled in a legal internship or clinical legal education course, including the intersessions between terms. The authority may be revoked by the court granting it for good cause.

(d) A law student may not directly represent clients but may only assist the supervising attorney or clinical teacher in representing their clients. All pleadings and entries of record in courts must be signed by the supervising attorney or clinical teacher.

(e) Law students may appear and participate in trials and hearings in courts if the supervising attorney or clinical teacher is present and supervising the student.

(f) Law students assigned as interns to prosecuting attorneys may assist the supervising attorney before grand juries subject to the same prohibitions and penalties as to disclosure and secrecy as are members of the grand jury.

(g) Law students will be subject to the same standards and rules of professional conduct and ethics and the same rules of discipline as are licensed attorneys.

(h) Law students shall receive no compensation for their services but may be reimbursed actual expenses if funds are available for that purpose.

SOURCES: Codes, 1942, § 8684-04; Laws, 1971, ch. 466, § 4; Laws, 1972, ch. 415, § 1; Laws, 1974, ch. 327; Laws, 1996, ch. 532, § 4; Laws, 2011, ch. 345, § 1, eff from and after July 1, 2011.

JUDICIAL DECISIONS

1. In general.

Representation by a legal intern, acting under authority of § 73-3-207, does not constitute the actual assistance of counsel guaranteed by the Constitution. Benbow v. State, 614 So. 2d 398 (Miss. 1993).

RESEARCH REFERENCES

ALR. Legal services provided by law students as basis for award of attorneys' fees or other litigation costs in action under Freedom of Information Act (5 USCS sec. 552(a)(4)(E)). 73 A.L.R. Fed. 732.

§ 73-3-209. Oath.

A law student who meets the qualifications set forth in this article may petition a circuit court, chancery court, the United States District Court for the Southern District of Mississippi or the United States District Court for the Northern District of Mississippi and present the oath in the following form:

"PETITION AND OATH FOR ADMISSION TO LIMITED PRACTICE

The undersigned, ________, does state and affirm that I am a law student who has the qualifications for admission to limited practice under the Law Student Limited Practice Act, Section 73-3-201 et seq., Mississippi Code of 1972, and seek the authority of this court to engage in limited practice under that act.

I do, upon my oath, solemnly swear (or affirm) that when granted that authority I will demean myself in accord with the conditions and limitations of the Law Student Limited Practice Act according to the best of my learning and ability and with all good fidelity as well to the court as to the client; that I will use no falsehood nor delay any person's cause for lucre or malice, and that I will support the Constitution of the United States and of the State of Mississippi so long as I continue a citizen thereof.

It is therefore prayed that this court order my admission to limited practice pursuant to said act."

The filing of the petition signed by the law student will constitute a sworn statement by the student under oath.

SOURCES: Codes, 1942, § 8684-05; Laws, 1971, ch. 466, § 5; Laws, 1996, ch. 532, § 5; Laws, 2011, ch. 345, § 2, eff from and after July 1, 2011.

§ 73-3-211. Order of judge administering oath; duration of authority to practice law.

Upon finding that a law student meets the qualifications for limited practice under this article, a judge of the court may order the admission of the student to limited practice in the following form:

"ORDER

Be it known that ________________, a law student, has petitioned this court for admission to the limited practice of law and presented the prescribed oath pursuant to the provisions of the Law Student Limited Practice Act, Section 73-3-201 et seq., Mississippi Code of 1972, and having found that said petitioner is a citizen of the United States who meets the requirements for such admission, the court therefore finds that petitioner is entitled to admission to the limited practice of law under said act.

It is therefore ordered and adjudged that ________ is admitted to the limited practice of law as a law student in all the state and federal courts of this state for the duration and upon the terms, conditions and limitations prescribed by said act.

Ordered and adjudged this ________ day of ________, 20________."

The petition and oath of the law student and the order of the court will be kept on file in the office of the clerk of the court.

SOURCES: Codes, 1942, § 8684-06; Laws, 1971, ch. 466, § 6; Laws, 1996, ch. 532, § 6; Laws, 2011, ch. 345, § 3, eff from and after July 1, 2011.

ARTICLE 7.

PROCEDURES TO DISCIPLINE AND TO DETERMINE PERSONAL INCAPACITY TO PRACTICE LAW.

SEC.	
73-3-301.	Disciplinary jurisdiction.
73-3-303.	Disciplinary agencies of court.
73-3-305.	Composition of disciplinary agencies; employment of complaint counsel and other employees.
73-3-307.	Powers of disciplinary agencies; contempt.
73-3-309.	Committee on complaints; referral of complaints; formal requirement of complaints.
73-3-310.	Duty of chancery and circuit courts to file complaints.
73-3-311.	Committee on complaints; action to be taken upon receipt of complaint or charge.
73-3-313.	Complaint counsel; investigations; notice and hearing to accused attorney.
73-3-315.	Complaint counsel; rules governing investigatory hearings.
73-3-317.	Complaint counsel; investigatory hearings; report of testimony and findings; response by accused attorney.
73-3-319.	Committee on complaints; action to be taken upon receipt of complaint counsel's report.
73-3-321.	Filing and prosecution of formal complaints; requirements of complaint and other pleadings; service.
73-3-323.	Complaint tribunal; designation; per diem, mileage and necessary expenses.
73-3-325.	Complaint tribunal; hearing; notice; rules.
73-3-327.	Complaint tribunal; written opinion; judgment.
73-3-329.	Complaint tribunal; appeal from judgment; record on appeal; scope of review; rules of practice.
73-3-331.	Complaint tribunal; effect of judgment of suspension or disbarment; appeal as supersedeas.
73-3-333.	Resignation by accused attorney during course of disciplinary proceedings; procedure; effect; section provides exclusive method.
73-3-335.	Modification or termination of suspension.
73-3-337.	Reinstatement.
73-3-339.	Conviction or entry of plea of nolo contendere for certain offenses.
73-3-341.	Disbarment or suspension in another jurisdiction.
73-3-343.	Confidentiality of matters under investigation and proceedings; penalties.
73-3-345.	Immunity from civil suit predicated on disciplinary proceedings.
73-3-347.	Personal incapacity; meaning of term "personally incapable" to practice law.
73-3-349.	Personal incapacity; suspension.
73-3-351.	Personal incapacity; proceedings; circumstances showing existence of condition.
73-3-353.	Personal incapacity; representation by counsel; guardian.
73-3-355.	Personal incapacity; service on attorney who has been committed or declared incompetent.
73-3-357.	Personal incapacity; sufficiency, as evidence, of court order of incompetence or commitment.

73-3-359. Personal incapacity; mental examination and reports.
73-3-361. Personal incapacity; judgment of suspension by complaint tribunal.
73-3-363. Personal incapacity; appeal procedures.
73-3-365. Personal incapacity; reinstatement procedures.
73-3-367. Disciplinary agencies; authority to incur expenses.
73-3-369. Jurisdiction over nonresident attorneys; notice; service.
73-3-371. Plea of nolo contendere; consent order of suspension or disbarment.
73-3-373. Recognition of inherent power of judicial branch of government.

§ 73-3-301. Disciplinary jurisdiction.

Any attorney regularly admitted to practice law in the state of Mississippi or any attorney specially admitted to practice law by a court of this state or any individual admitted to practice as an attorney in any other jurisdiction who regularly engages in the practice of law within this state as house counsel to corporations or other entities, counsel for governmental agencies, out-of-state lawyers admitted or permitted to practice law in this state by comity, bar examination or otherwise are subject to the exclusive and inherent disciplinary jurisdiction of the supreme court of Mississippi and the disciplinary agencies hereinafter established and designated; provided, however, nothing herein contained shall be construed to deny to any other court such powers as are necessary for that court to maintain control over practice in and proceedings conducted before it, such as the power of contempt, nor to prohibit local bar associations from censuring, suspending or expelling their members from membership in such local bar association.

SOURCES: Laws, 1974, ch. 566, § 1; reenacted, Laws, 1983, ch. 302, § 24; reenacted, Laws, 1991, ch. 526, § 27; reenacted, Laws, 1992, ch. 515, § 27, eff from and after July 1, 1992.

Cross References — Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Rules of discipline, generally, see Rules of Discipline for the Mississippi State Bar, Rules 1 through 29.

Jurisdiction over disciplinary matters, see Rules of Discipline for the Mississippi State Bar, Rule 1.

JUDICIAL DECISIONS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 73-3-157.

1. In general.

Mississippi Supreme Court had exclusive inherent jurisdiction over an attorney and his or her license to practice law in Mississippi. Thus, Miss. Code Ann. § 73-3-41, which allowed any court (in the instant case a circuit court), to disbar an attorney, was in direct conflict with the aforementioned rule; however, the substantive and procedural prerequisites of Miss. R. Disc. St. Bar 6 had been satisfied, and therefore, the attorney who was convicted of a felony, was suspended from the practice of law pending his appeal of the criminal conviction. Miss. Bar v. Jackson, 904 So. 2d 109 (Miss. 2004).

The complaint procedure established by the Supreme Court for attorney disciplinary proceedings does not violate due process on the ground that members of the complaint tribunal are also members of the Mississippi Bar. Asher v. Mississippi Bar, 661 So. 2d 722 (Miss. 1995).

Although the Rules of Discipline for the Mississippi Bar provide for reinstatement through petition, an order of automatic reinstatement is within the scope of the Supreme Court's exclusive and inherent jurisdiction of attorney discipline matters. Broome v. Mississippi Bar, 603 So. 2d 349 (Miss. 1992).

All bar disciplinary matters are governed by Rules of Discipline for the Mississippi State Bar, effective January 1, 1984, subject only to Constitutions of State of Mississippi and United States of America, because bar disciplinary statutes were abrogated by new rules issued by Supreme Court when it asserted its exclusive and inherent jurisdiction of matters pertaining to attorney discipline. Mississippi State Bar v. Attorney L., 511 So. 2d 119 (Miss. 1987).

United States Constitution Articles I and III do not pre-empt Supreme Court's authority to act with respect to license to practice law issued by state to United States District Court judge. Mississippi State Bar v. Nixon, 494 So. 2d 1388 (Miss. 1986).

Petitioner who files complaint with committee on complaints charging former attorney with unprofessional conduct has no right to appeal dismissal of complaint. Smith v. Mississippi State Bar, 475 So. 2d 148 (Miss. 1985).

The appellate court would not grant a writ of prohibition seeking to enjoin an attorney from representing a particular client on the asserted basis that said representation would violate the Mississippi State Bar's Canons of Ethics, since § 73-3-301 et seq. create a mechanism that establishes a regimen of attorney discipline and sanctions post-offense, appropriately eschewing prior restraints. Thornton v. Breland, 441 So. 2d 1348 (Miss. 1983).

Bar disciplinary proceedings pursuant to §§ 73-3-301 et seq. are adversary proceedings of a quasi-criminal nature, at which the State Bar has the burden of proving in the Supreme Court by clear and convincing evidence each and every evidentiary and ultimate fact necessary to support a judgment that an attorney should be disciplined or disbarred; accordingly, the Complaints Tribunal erred in directing that attorneys be reprimanded for holding an open house upon the opening of a branch office, on the asserted basis that their actions constituted solicitation, where the State Bar offered no proof other than the mere fact of the "open house" and a stipulation that no actual solicitation occurred, and where the attorneys' uncontradicted testimony indicated that they merely wanted their friends, relatives, and former clients to be greeted by them at their new branch office. Walls v. Mississippi State Bar, 437 So. 2d 30 (Miss. 1983).

Miss. Code § 73-3-301, et seq., rather than Miss. Code § 73-3-41, were applicable in an application for reinstatement to the Mississippi State Bar following disbarment on the ground of conviction of federal felonies involving moral turpitude; accordingly, petitioner would be reinstated where the state bar admitted all the averments and facts of the petition, which set out that no claims had been made, or were contemplated, for restitution of money, that he had conducted himself in a manner beyond criticism, that he had been able to obtain employment and had supplied the needs of his family, that he had continued to be active in community and civic activities and had been a good citizen during the period of his disbarment, and that if he was reinstated, he would be a valuable member of the Mississippi State Bar in the future and would conduct himself in such way as to be a credit to the state bar and to the State of Mississippi. Phillips v. Mississippi State Bar, 427 So. 2d 1380 (Miss. 1983).

Under the common law as well as statute, any person filing a complaint in accordance with the disciplinary statutes and rules is accorded absolute privilege and no lawsuit predicated thereon may be instituted so long as the statements are made within the course and framework of the disciplinary process and are reasonably relevant to the complaint. And, unless it appears from the face of the pleading that the communication complained of exceeds the purpose of stating a complaint in the proper forum, it is absolutely privileged, and there can be no trial of the underlying motives of the defendant in instituting the complaint. This immunity shall extend to any cause of action, whatever the name, be it libel and slander, invasion of privacy, abuse of process or other. The immunity from suit accorded such privilege does not extend to one who thereafter maliciously publishes and causes said complaint or information contained therein to be circulated about the state to persons not authorized by the statute and regulations to receive same. Although immunity from being sued is accorded anyone, attorney or layman, who files a complaint with the State Bar, attorneys may nevertheless be disciplined by the Complaints Committee for maliciously filing groundless complaints without having at least an arguable justification for doing so. Netterville v. Lear Siegler, Inc., 397 So. 2d 1109 (Miss. 1981).

In future proceedings under §§ 73-3-301 et seq., the investigatory hearing, while not "a full evidentiary hearing," must be expanded to permit the accused attorney the privilege of offering transcripts of the testimony of witnesses and the right to cross-examine witnesses whose testimony is taken by complaints counsel, the transcripts in each instance to be included as parts of complaints counsel's report, with other material required by the statute. Moreover, before any punishment may be ordered by the complaints committee, it must find from the report thus made up that there is clear and convincing evidence that the accused attorney is guilty of the professional dereliction with which he is charged. Netterville v. Mississippi State Bar, 397 So. 2d 878 (Miss. 1981).

In disciplinary proceedings against an attorney who was convicted of a felony in federal court, the chancery court had no jurisdiction to restrain the State Bar from filing in the Supreme Court a certified copy of the attorney's conviction, and the Supreme Court's order invalidating the temporary injunction was valid in every respect, despite the attorney's contentions that the order was without adequate process and notice to him, and that § 73-3-339, which requires that the suspension of an attorney convicted of a felony from practice of law pending appeal, is unconstitutional; the injunction against the State Bar amounted to a usurpation of the powers and duties vested exclusively in the Supreme Court, and the order striking the injunction did not cut off the attorney's right to raise any defense, contention, or constitutional issue in the pending disciplinary action. Bramlett v. Burgin, 382 So. 2d 284 (Miss. 1979).

Insofar as the Supreme Court is vested with exclusive and inherent disciplinary jurisdiction over attorneys in the state, the Board of Commissioners of the bar, which is an agency of the Supreme Court for disciplinary purposes, would be allowed to impose a special annual assessment upon each dues-paying member of the bar for purposes of financing the disciplinary activities and agencies provided for by statute. In re Mississippi State Bar, 361 So. 2d 503 (Miss. 1978).

2.-5. [Reserved for future use.]

6. Under former § 73-3-157.

Statutes, regulating the bar and providing for procedure against members for misconduct, are generally regarded as prescribing a preferential method of procedure, which the court may, and in most cases ought, as a matter of discretion, to require to be followed but which is not exclusive; such statutes are not restrictive of the inherent powers which reside in courts to inquire into the conduct of their own officers, and to discipline them for misconduct. In re Higgins, 194 Miss. 838, 13 So. 2d 829 (1943).

RESEARCH REFERENCES

ALR. Power of court to order restitution to wronged client in disciplinary proceeding against attorney. 75 A.L.R.3d 307.

Effect of acquittal or dismissal in criminal prosecution as barring disciplinary action against attorney. 76 A.L.R.3d 1028.

Method employed in collecting debt due client as ground for disciplinary action against attorney. 93 A.L.R.3d 880.

Attorneys at law: delay in prosecution of disciplinary proceeding as defense or mitigating circumstance. 93 A.L.R.3d 1057.

Lawyer publicity as breach of legal ethics. 4 A.L.R.4th 306.

Advertising as ground for disciplining attorney. 30 A.L.R.4th 742.

Failure to co-operate with or obey disciplinary authorities as ground for disciplining attorney — modern cases. 37 A.L.R.4th 646.

Initiating, or threatening to initiate, criminal prosecution as ground for disciplining counsel. 42 A.L.R.4th 1000.

Sexual misconduct as ground for disciplining attorney or judge. 43 A.L.R.4th 1062.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in matters involving formation or dissolution of business organization as ground for disciplinary action — modern cases. 63 A.L.R.4th 656.

Imposition of sanctions upon attorneys or parties for miscitation of misrepresentation of authorities. 63 A.L.R.4th 1199.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in family law matters as ground for disciplinary action — modern cases. 67 A.L.R.4th 415.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in personal injury or property damage actions as ground for disciplinary action-modern cases. 68 A.L.R.4th 694.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in criminal matters as ground for disciplinary action-modern cases. 69 A.L.R.4th 410.

Attorney's assertion of retaining lien as violation of ethical code or rules governing professional conduct. 69 A.L.R.4th 974.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in bankruptcy matters as ground for disciplinary action. 70 A.L.R.4th 786.

Ineffective assistance of counsel: use or nonuse of interpreter at prosecution of foreign language speaking defendant. 79 A.L.R.4th 1102.

Disciplinary action against attorney taking loan from client. 9 A.L.R.5th 193.

Am Jur. 2 Am. Jur. Pl & Pr Forms (Rev), Attorneys At Law, Forms 281 et seq.

31 Am. Jur. Trials 633, Defending Lawyers in Disciplinary Proceedings.

44 Am. Jur. Proof of Facts 2d 377, Legal Malpractice in Domestic Relations.

Law Reviews. Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue — Rules 16, 81 and 82. 52 Miss. L. J. 105, March, 1982.

1981 Mississippi Supreme Court Review: Administrative Law. 52 Miss. L. J. 377, June 1982.

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Tanford, The Trial Process: Law, Tactics and Ethics, Fourth Edition (LexisNexis).

Zitrin, Langford and Tarr, Legal Ethics in the Practice of Law, Third Edition (Matthew Bender).

Zitrin and Mohr, Legal Ethics: Rules, Statutes and Comparisons, 2011 Edition (Matthew Bender).

§ 73-3-303. Disciplinary agencies of court.

The jurisdiction of the court shall be administered in the manner hereinafter set out, and the following entities are hereby established and designated as agencies of the court for such purposes:

(a) The Board of Commissioners of the Mississippi Bar, including the Executive Director of the Mississippi Bar and complaint counsel.

(b) The committee on complaints of the Mississippi Bar.

(c) The complaint tribunals appointed by the Supreme Court of Mississippi.

SOURCES: Laws, 1974, ch. 566, § 2; reenacted, Laws, 1983, ch. 302, § 25; Laws, 1991, ch. 526, § 28; reenacted, Laws, 1992, ch. 515, § 28, eff from and after July 1, 1992.

Cross References — Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Jurisdiction over disciplinary matters, see Rules of Discipline for the Mississippi State Bar, Rule 1.

JUDICIAL DECISIONS

1. In general.

The complaint procedure established by the Supreme Court for attorney disciplinary proceedings does not violate due process on the ground that members of the complaint tribunal are also members of the Mississippi Bar. Asher v. Mississippi Bar, 661 So. 2d 722 (Miss. 1995).

Although the Rules of Discipline for the Mississippi Bar provide for reinstatement through petition, an order of automatic reinstatement is within the scope of the Supreme Court's exclusive and inherent jurisdiction of attorney discipline matters. Broome v. Mississippi Bar, 603 So. 2d 349 (Miss. 1992).

Insofar as the Supreme Court is vested with exclusive and inherent disciplinary jurisdiction over attorneys in the state, the Board of Commissioners of the bar, which is an agency of the Supreme Court for disciplinary purposes, would be allowed to impose a special annual assessment upon each dues-paying member of the bar for purposes of financing the disciplinary activities and agencies provided for by statute. In re Mississippi State Bar, 361 So. 2d 503 (Miss. 1978).

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. 2d, Attorneys at Law §§ 32 et seq.

2 Am. Jur. Pl & Pr Forms (Rev), Attorneys at Law, Forms 281 et seq., 311 et seq.

CJS. 7A C.J.S., Attorney and Client §§ 89, 90 et seq.

Practice References. L. Ray Patterson, Lawyer's Law: Procedural, Malpractice & Disciplinary Issues (Matthew Bender).

§ 73-3-305. Composition of disciplinary agencies; employment of complaint counsel and other employees.

The composition of the aforesaid disciplinary agencies shall be as follows:

(a) Board of Commissioners. The Board of Commissioners of the Mississippi Bar is provided for in Section 73-3-107, Mississippi Code of 1972. The board shall have the authority to employ and compensate a competent person to serve as complaint counsel, who shall be a member of the bar of this state and who shall serve at the pleasure of the board, either in a full-time or part-time capacity. In addition, the board shall have the authority to employ and compensate such assistants to and staff for the complaint counsel and to employ and compensate such other persons as the board may from time to time deem necessary or advisable to effect the disciplinary procedures set forth herein.

(b) Committee on complaints. The committee on complaints shall be appointed by the President of the Mississippi Bar in the manner provided in its bylaws, but said committee shall consist of at least one (1) member from each of the Supreme Court districts of the state. The chairman and vice chairman of the committee shall be designated by the President of the Mississippi Bar.

(c) Complaint tribunals. Complaint tribunals for each of the Supreme Court districts of the state, consisting of three (3) members who are members of the bar of this state, shall be appointed by the Chief Justice of the Supreme Court to serve on a calendar year basis.

SOURCES: Laws, 1974, ch. 566, § 3; reenacted, Laws, 1983, ch. 302, § 26; Laws, 1991, ch. 526, § 29; reenacted, Laws, 1992, ch. 515, § 29, eff from and after July 1, 1992.

Cross References — Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Disciplinary agencies designated, see Rules of Discipline for the Mississippi State Bar, Rule 3.

§ 73-3-307. Powers of disciplinary agencies; contempt.

Each of the disciplinary agencies is hereby given such jurisdiction and lawful powers as are necessary to conduct a proper and speedy disposition of any complaint. The power to summons and examine witnesses under oath and to compel their attendance to take or cause to be taken the deposition of witnesses and to order the production of books, papers, records and other documentary evidence necessary or material to the investigation or complaint shall be coequal to the powers exercisable by the courts of record of this state. All summonses or subpoenas shall be issued by the clerk of the court, and it shall be the duty of any person so summoned to appear and testify as in the writ commanded and to produce the books, papers, records or other documentary evidence required. Summonses and subpoenas issued by the clerk of the court shall be delivered to the sheriff of the county where they are to be executed, and the sheriff shall serve such writs and notices, or cause them to be served, as he is required to do with respect to writs received by him from any other court of record.

Any defiance of any summons or subpoena so issued, or other extrajudicial conduct which shall inhibit, impede or disrupt any of the above disciplinary agencies in the performance of the duties and in the exercise of the powers herein given shall be treated as contempt of the court and punishable accordingly.

SOURCES: Laws, 1974, ch. 566, § 4; reenacted, Laws, 1983, ch. 302, § 27; reenacted, Laws, 1991, ch. 526, § 30; reenacted, Laws, 1992, ch. 515, § 30, eff from and after July 1, 1992.

Cross References — Power to punish for contempt of court, see § 9-1-17.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Power and enforcement over disciplinary matters, see Rules of Discipline for the Mississippi State Bar, Rule 2.

JUDICIAL DECISIONS

1. In general.

The "clerk of the court", as appearing in § 73-3-307, refers to the clerk of the Mississippi Supreme Court, who administers the subpoena process in bar disciplinary proceedings. Attorney K. v. Mississippi State Bar Ass'n, 491 So. 2d 220 (Miss. 1986).

The Mississippi State Bar Association may not vest in its Committee on Complaints discretionary authority to issue or withhold subpoenas. Attorney K. v. Mississippi State Bar Ass'n, 491 So. 2d 220 (Miss. 1986).

Disciplinary proceedings against an attorney before the Committee on Complaints were held in violation of the attorney's due process rights secured by United States and Mississippi constitutions and by Mississippi Code § 73-3-307, where, at a critical stage, no subpoena was issued, despite the attorney's verbal and written request therefor, to secure the attendance of the chancery judge whom the attorney had allegedly deceived, and the judge, who was a crucial witness, did not appear before the Committee. Attorney K. v. Mississippi State Bar Ass'n, 491 So. 2d 220 (Miss. 1986).

Since Bar disciplinary proceedings are inherently adversarial proceedings of a quasi-criminal nature, in the course of those proceedings there is secured to the accused attorney the right to due process of law, and within such secured due process right is the right of the accused attorney to have access to compulsory process for obtaining attendance of witnesses at critical stages of the proceedings. Attorney K. v. Mississippi State Bar Ass'n, 491 So. 2d 220 (Miss. 1986).

An attorney cannot be compelled to testify at a hearing in the investigatory stages of a state bar disciplinary proceeding or to respond to a subpoena duces tecum prior to the filing of a formal complaint against him by the complaint committee; the legislature did not contemplate forced cooperation by an attorney in the investigative stages. Mississippi State Bar v. Attorney-Respondent in Disciplinary Proceedings, 367 So. 2d 179 (Miss. 1979).

RESEARCH REFERENCES

ALR. Restricting access to records of disciplinary proceedings against attorneys. 83 A.L.R.3d 749.

Discovery or inspection of state bar records of complaints against or investigations of attorneys. 83 A.L.R.3d 777.

Extent and determination of attorney's right or privilege against self-incrimination in disbarment or other disciplinary proceedings — post-Spevack cases. 30 A.L.R.4th 243.

Failure to co-operate with or obey disciplinary authorities as ground for disciplining attorney — modern cases. 37 A.L.R.4th 646.

Bringing of frivolous civil claim or action as ground for discipline of attorney. 85 A.L.R.4th 544.

Soliciting client to commit illegal or immoral act as ground for discipline of attorney. 85 A.L.R.4th 567.

Am Jur. 7 Am. Jur. 2d, Attorneys at Law §§ 29 et seq.

2 Am. Jur. Pl & Pr Forms (Rev), Attorneys at Law, Forms 295-298.5.

CJS. 7A C.J.S., Attorney and Client §§ 99-103.

Practice References. L. Ray Patterson, Lawyer's Law: Procedural, Malpractice & Disciplinary Issues (Matthew Bender).

§ 73-3-309. Committee on complaints; referral of complaints; formal requirement of complaints.

Complaints, irrespective of source, touching upon the professional conduct or conduct evincing unfitness for the practice of law made against attorneys who are members of the bar of this state or who may be temporarily practicing in this state under any rule of comity or courtesy, that may be received by or that may come to the attention of any judicial officer, the board of commissioners or any members of the Mississippi State Bar, shall be referred to the committee on complaints for preliminary investigation and such disposition or further action as may be appropriate. The complaint must be in writing and signed by the person making the complaint or charge and the complaint must be sworn to or supported by affidavit or the signature of the complaining party witnessed by two (2) persons twenty-one (21) years of age or older. Additionally, the complaint shall contain the street address of the complaining party and each witness.

SOURCES: Laws, 1974, ch. 566, § 5; reenacted, Laws, 1983, ch. 302, § 28; reenacted, Laws, 1991, ch. 526, § 31; reenacted, Laws, 1992, ch. 515, § 31, eff from and after July 1, 1992.

Cross References — Duty of chancery and circuit courts to file complaints, see § 73-3-310.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Initiation and filing of complaints, see Rules of Discipline for the Mississippi State Bar, Rule 4.

JUDICIAL DECISIONS

1. In general.

Disciplining attorney for soliciting business through advertisements containing nondeceptive illustrations and legal advice violates attorney's First Amendment rights. Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio, 471 U.S. 626, 105 S. Ct. 2265, 85 L. Ed. 2d 652 (1985).

Delay in instigation of disciplinary proceedings against attorney does not operate as bar to proceedings absent showing that delay has resulted in prejudice to attorney. Clark v. Mississippi State Bar Ass'n, 471 So. 2d 352 (Miss. 1985).

Dismissal by committee on complaint of complaint against attorney is not judicial determination on merits, but rather is analogous to review by grand jury, and is not res judicata bar against subsequent complaint based on same allegations as those in dismissed complaint. Clark v. Mississippi State Bar Ass'n, 471 So. 2d 352 (Miss. 1985).

An attorney cannot be compelled to testify at a hearing in the investigatory stages of a state bar disciplinary proceeding or to respond to a subpoena duces tecum prior to the filing of a formal complaint against him by the complaint committee; the legislature did not contemplate forced cooperation by an attorney in the investigative stages. Mississippi State Bar v. Attorney-Respondent in Disciplinary Proceedings, 367 So. 2d 179 (Miss. 1979).

RESEARCH REFERENCES

ALR. Participation in allegedly collusive or connived divorce proceedings as subjecting attorney to disciplinary action. 13 A.L.R.3d 1010.

What constitutes representation of conflicting interest subjecting attorney to disciplinary action. 17 A.L.R.3d 835.

Violation of securities regulations as ground of disciplinary action against attorney. 18 A.L.R.3d 1408.

Homicide or assault as ground for disciplinary measures against attorney. 21 A.L.R.3d 887.

Fabrication or suppression of evidence as ground of disciplinary action against attorney. 40 A.L.R.3d 169.

Attorney at law: publication and distribution of announcement of new or changed associations or addresses, change of firm name, or the like as ground for disciplinary action. 53 A.L.R.3d 1261.

Attorneys at law: disciplinary proceeding based upon attorney's naming of himself or associate as executor or attorney for executor in will drafted by him. 57 A.L.R.3d 703.

Misconduct in capacity as judge as basis for disciplinary action against attorney. 57 A.L.R.3d 1150.

Pardon as defense to disbarment of attorney. 59 A.L.R.3d 466.

Entrapment as a defense in proceedings to revoke or suspend license to practice law or medicine. 61 A.L.R.3d 357.

Use in disbarment proceeding of testimony given by attorney in criminal proceeding under grant of immunity. 62 A.L.R.3d 1145.

Effect of acquittal or dismissal in criminal prosecution as barring disciplinary action against attorney. 76 A.L.R.3d 1028.

Disciplinary action against attorney prior to exhaustion of appellate review of conviction. 76 A.L.R.3d 1061.

Failure to communicate with client as basis for disciplinary action against attorney. 80 A.L.R.3d 1240.

Attorneys at Law: fee collection practice as ground for disciplinary action. 91 A.L.R.3d 583.

Attorney's failure to report promptly receipt of money or property belonging to client as ground for disciplinary action. 91 A.L.R.3d 975.

Conduct of attorney in connection with settlement of client's case as ground for disciplinary action. 92 A.L.R.3d 288.

Conduct of attorney in capacity of executor or administrator of decedent's estate as ground for disciplinary action. 92 A.L.R.3d 655.

Disciplinary action against attorney based on misconduct prior to admission to bar. 92 A.L.R.3d 807.

Restitution as mitigating circumstance in disciplinary action against attorney based on wrongful conduct creating liability to client. 95 A.L.R.3d 724.

Modern status of law regarding solicitation of business by or for attorney. 5 A.L.R.4th 866.

Disciplinary action against attorney for misconduct related to performance of official duties as prosecuting attorney. 10 A.L.R.4th 605.

Attorney's charging excessive fee as ground for disciplinary action. 11 A.L.R.4th 133.

Admissibility and necessity of expert evidence as to standards of practice and negligence in malpractice action against attorney. 14 A.L.R.4th 170.

Disciplinary action against attorney based on communications to judge respecting merits of cause. 22 A.L.R.4th 917.

Election campaign activities as ground for disciplining attorney. 26 A.L.R.4th 170.

Advertising as ground for disciplining attorney. 30 A.L.R.4th 742.

Disciplinary action against attorney for aiding or assisting another person in unauthorized practice of law. 41 A.L.R.4th 361.

Sexual misconduct as ground for disciplining attorney or judge. 43 A.L.R.4th 1062.

Legal malpractice in handling or defending medical malpractice claim. 78 A.L.R.4th 725.

Disciplinary action against judge for engaging in ex parte communication with attorney, party, or witness. 82 A.L.R.4th 567.

Bringing of frivolous civil claim or action as ground for discipline of attorney. 85 A.L.R.4th 544.

Soliciting client to commit illegal or immoral act as ground for discipline of attorney. 85 A.L.R.4th 567.

Misconduct involving intoxication as ground for disciplinary action against attorney. 1 A.L.R.5th 874.

Admissibility and effect of evidence of professional ethics rules in legal malpractice action. 50 A.L.R.5th 301.

Am Jur. 14 Am. Jur. Pl & Pr Forms (Rev), (complaint for injunction to enjoin suspension or revocation of license arising from performance of judgment for services for which licensee was required was discharged in bankruptcy).

31 Am. Jur. Trials 633, Defending Lawyers in Disciplinary Proceedings.

Practice References. L. Ray Patterson, Lawyer's Law: Procedural, Malpractice & Disciplinary Issues (Matthew Bender).

§ 73-3-310. Duty of chancery and circuit courts to file complaints.

The chancery and circuit courts shall have the duty to file a complaint under the terms and provisions as outlined in Section 73-3-309 against any attorney who is a resident of the court's district and who demonstrates conduct evincing unfitness for the practice of law.

SOURCES: Laws, 1979, ch. 486, § 9; reenacted, Laws, 1983, ch. 302, § 29; reenacted, Laws, 1991, ch. 526, § 32; reenacted, Laws, 1992, ch. 515, § 32, eff from and after July 1, 1992.

Cross References — Committee on complaints and formal requirements of complaints, see § 73-3-309.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Initiation and filing of complaints, see Rules of Discipline for the Mississippi State Bar, Rule 4.

§ 73-3-311. Committee on complaints; action to be taken upon receipt of complaint or charge.

When any complaint or charge touching upon the professional conduct or conduct evincing unfitness for the practice of law against any attorney subject to discipline hereunder is received by the committee on complaints, the committee shall, within ten (10) days thereof, take the following action:

(a) Cause the complaint or charge to be filed and docketed with the Executive Director of the Mississippi Bar;

(b) Screen the complaint or charge for merit or the lack thereof, if such determination can be made from the allegations of the complaint and any accompanying documents; and

(c) Dismiss any frivolous or ill-grounded complaint or one obviously without merit; or

(d) Refer the complaint to complaint counsel for further investigation, hearing and report.

SOURCES: Laws, 1974, ch. 566, § 6; reenacted, Laws, 1983, ch. 302, § 30; Laws, 1991, ch. 526, § 33; reenacted, Laws, 1992, ch. 515, § 33, eff from and after July 1, 1992.

Cross References — Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Initiation and filing of complaints, see Rules of Discipline for the Mississippi State Bar, Rule 4.

JUDICIAL DECISIONS

1. In general.

State violated First Amendment by completely prohibiting lawyer from advertising certification by private professional organization as trial specialist; even assuming lawyer's letterhead was potentially misleading to some consumers, state's interest in avoiding such potential was insufficient to justify categorical ban against dissemination of accurate factual information; to extent lawyer's potentially misleading statements could confuse consumers, state might consider screening certifying organizations or requiring disclaimer; inherent authority of state Supreme Court to supervise its own bar did not insulate that court's judgment from review by United States Supreme Court. Peel v. Attorney Registration & Disciplinary Comm'n, 496 U.S. 91, 110 S. Ct. 2281, 110 L. Ed. 2d 83 (1990).

Dismissal by committee of complaint against attorney is not judicial determination on merits, but rather is analogous to review by grand jury, and is not res judicata bar against subsequent complaint based on same allegations as those in dismissed complaint. Clark v. Mississippi State Bar Ass'n, 471 So. 2d 352 (Miss. 1985).

An attorney cannot be compelled to testify at a hearing in the investigatory stages of a state bar disciplinary proceeding or to respond to a subpoena duces tecum prior to the filing of a formal complaint against him by the complaint committee; the legislature did not contemplate forced cooperation by an attorney in the investigative stages. Mississippi State Bar v. Attorney-Respondent in Disciplinary Proceedings, 367 So. 2d 179 (Miss. 1979).

RESEARCH REFERENCES

ALR. Mandamus to compel disciplinary investigation or action against physician or attorney. 33 A.L.R.3d 1429.

Misconduct involving intoxication as ground for disciplinary action against attorney. 1 A.L.R.5th 874.

§ 73-3-313. Complaint counsel; investigations; notice and hearing to accused attorney.

The complaint counsel shall immediately investigate the complaint; and upon completion of his investigation, excluding the investigatory hearing, he shall inform the accused attorney that a complaint has been filed against him and that he is under investigation, advise the accused attorney of the general nature of the charges, furnish him a copy of the complaint and any evidence supporting it, afford the accused attorney a hearing, and advise the attorney of the time and place of such hearing. Communications and notices to the accused attorney shall be transmitted by registered or certified mail, return receipt requested, and marked "Deliver to Addressee Only.'

SOURCES: Laws, 1974, ch. 566, § 7; reenacted, Laws, 1983, ch. 302, § 31; reenacted, Laws, 1991, ch. 526, § 34; reenacted, Laws, 1992, ch. 515, § 34, eff from and after July 1, 1992.

Cross References — Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Complaint counsel — duties and powers, see Rules of Discipline for the Mississippi State Bar, Rule 5.

JUDICIAL DECISIONS

1. In general.

In future proceedings under §§ 73-3-301 et seq., the investigatory hearing, while not "a full evidentiary hearing," must be expanded to permit the accused attorney the privilege of offering transcripts of the testimony of witnesses and the right to cross-examine witnesses whose testimony is taken by complaints counsel, the transcripts in each instance to be included as parts of complaints counsel's report, with other material required by the statute. Moreover, before any punishment may be ordered by the complaints committee, it must find from the report thus made up that there is clear and convincing evidence that the accused attorney is guilty of the professional dereliction with which he is charged. Netterville v. Mississippi State Bar, 397 So. 2d 878 (Miss. 1981).

An attorney cannot be compelled to testify at a hearing in the investigatory stages of a state bar disciplinary proceeding or to respond to a subpoena duces tecum prior to the filing of a formal complaint against him by the complaint committee; the legislature did not contemplate forced cooperation by an attorney in the investigative stages. Mississippi State Bar v. Attorney-Respondent in Disciplinary Proceedings, 367 So. 2d 179 (Miss. 1979).

RESEARCH REFERENCES

ALR. Validity and construction of procedures to temporarily suspend attorney from practice, or place attorney on inactive status, pending investigation of, and action upon, disciplinary charges. 80 A.L.R.4th 136.

Law Reviews. 1981 Mississippi Supreme Court Review: Administrative Law. 52 Miss. L. J. 377, June, 1982.

§ 73-3-315. Complaint counsel; rules governing investigatory hearings.

The following rules for investigatory hearings by complaint counsel are for the guidance of complaint counsel and shall be strictly followed:

(a) The complainant is not a party to the proceeding and has no right to be present at any stage thereof.

(b) The accused attorney has no right to be present at any stage of the investigatory hearing, either in person or by counsel, except complaint counsel shall afford him an opportunity to make a statement, either personally or by counsel, verbally or in writing, refuting or admitting the alleged misconduct and to offer any matter in mitigation or extenuation. The accused attorney may document his statement to include the admission of affidavits but shall not have the right to present other testimony or evidence and shall have no right to confrontation.

(c) The investigatory hearing shall neither be public nor assume the character of an adversary proceeding, and a full evidentiary hearing on the merits is not contemplated.

(d) Formal rules of evidence will not be applied.

(e) Investigation by complaint counsel will not be stayed by settlement, compromise, admission of guilt or restitution.

(f) Any attorney called as a witness shall be informed before he gives evidence as to whether he is under investigation and, if so, the nature of the charges against him.

(g) Testimony will not be elicited or received which is not germane to the charges being investigated by complaint counsel.

SOURCES: Laws, 1974, ch. 566, § 7; reenacted, Laws, 1983, ch. 302, § 32; reenacted, Laws, 1991, ch. 526, § 35; reenacted, Laws, 1992, ch. 515, § 35, eff from and after July 1, 1992.

Cross References — Right of accused attorney to submit resignation and thus terminate the investigation procedure, see § 73-3-333.

Termination of investigation or proceedings upon acceptance of plea of nolo contendere, see § 73-3-371.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Complaint counsel — duties and powers, see Rules of Discipline for the Mississippi State Bar, Rule 5.

JUDICIAL DECISIONS

1. In general.

In future proceedings under §§ 73-3-301 et seq., the investigatory hearing, while not "a full evidentiary hearing," must be expanded to permit the accused attorney the privilege of offering transcripts of the testimony of witnesses and the right to cross-examine witnesses whose testimony is taken by complaints counsel, the transcripts in each instance to be included as parts of complaints counsel's report, with other material required by the statute. Moreover, before any punishment may be ordered by the complaints committee, it must find from the report thus made up that there is clear and convincing evidence that the accused attorney is guilty of the professional dereliction with which he is charged. Netterville v. Mississippi State Bar, 397 So. 2d 878 (Miss. 1981).

An attorney cannot be compelled to testify at a hearing in the investigatory stages of a state bar disciplinary proceeding or to respond to a subpoena duces tecum prior to the filing of a formal complaint against him by the complaint committee; the legislature did not contemplate forced cooperation by an attorney in the investigative stages. Mississippi State Bar v. Attorney-Respondent in Disciplinary Proceedings, 367 So. 2d 179 (Miss. 1979).

RESEARCH REFERENCES

ALR. Restricting access to records of disciplinary proceedings against attorneys. 83 A.L.R.3d 749.

Discovery or inspection of state bar records of complaints against or investigations of attorneys. 83 A.L.R.3d 777.

Admissibility of lie detector test results, or of offer or refusal to take test, in attorney disciplinary proceeding. 79 A.L.R.4th 576.

Validity and construction of procedures to temporarily suspend attorney from practice, or place attorney on inactive status, pending investigation of, and action upon, disciplinary charges. 80 A.L.R.4th 136.

Appointment of counsel for attorney facing disciplinary charges. 86 A.L.R.4th 1071.

Law Reviews. 1981 Mississippi Supreme Court Review: Administrative Law. 52 Miss. L. J. 377, June, 1982.

§ 73-3-317. Complaint counsel; investigatory hearings; report of testimony and findings; response by accused attorney.

Complaint counsel will cause the testimony of any witnesses at an investigatory hearing to be taken and transcribed and shall certify the same to the committee on complaints, along with his written findings, within thirty (30) days from and after the date on which the complaint was received by him, except that, for good cause shown, upon application to the chairman of said committee, complaint counsel may be granted a total of not more than thirty (30) additional days in which to make said certification. A copy of complaint counsel's report shall be sent to the accused attorney by certified mail, and the accused attorney shall have ten (10) days after the receipt by him of complaint counsel's report to file a written response thereto with the committee on complaints. Upon application to the chairman of the said committee, the accused attorney may be granted such additional time as circumstances warrant.

SOURCES: Laws, 1974, ch. 566, § 8; reenacted, Laws, 1983, ch. 302, § 33; reenacted, Laws, 1991, ch. 526, § 36; reenacted, Laws, 1992, ch. 515, § 36, eff from and after July 1, 1992.

Cross References — Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Complaint counsel — duties and powers, see Rules of Discipline for the Mississippi State Bar, Rule 5.

JUDICIAL DECISIONS

1. In general.

Any harm resulting from deprival of right of accused attorney to confront and cross-examine accuser at investigatory hearing is subsequently eliminated when complaints tribunal allows confrontation and cross-examination at full evidentiary hearing. Myers v. Mississippi State Bar, 480 So. 2d 1080 (Miss. 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 23 (1986).

There was no violation of §§ 73-3-317 and 73-3-319, by continuing the investigation into alleged violations of disciplinary rules by a Mississippi attorney after the investigatory hearing, or by use of subsequently discovered evidence, where, even though the attorney had not been notified of the subsequent investigation when it had occurred, he received sufficient notice upon receipt of complaint counsel's report that further investigation had been conducted, and where the attorney had had sufficient time to respond to the report between the time he received his copy and the time a formal complaint was filed against him, and had chosen not to do so. A Miss. Att'y v. Mississippi State Bar, 453 So. 2d 1023 (Miss. 1984).

An attorney cannot be compelled to testify at a hearing in the investigatory stages of a state bar disciplinary proceeding or to respond to a subpoena duces tecum prior to the filing of a formal complaint against him by the complaint committee; the legislature did not contemplate forced cooperation by an attorney in the investigative stages. Mississippi State

Bar v. Attorney-Respondent in Disciplinary Proceedings, 367 So. 2d 179 (Miss. 1979).

RESEARCH REFERENCES

ALR. Admissibility of lie detector test results, or of offer or refusal to take test, in attorney disciplinary proceeding. 79 A.L.R.4th 576.

Validity and construction of procedures to temporarily suspend attorney from practice, or place attorney on inactive status, pending investigation of, and action upon, disciplinary charges. 80 A.L.R.4th 136.

§ 73-3-319. Committee on complaints; action to be taken upon receipt of complaint counsel's report.

Within thirty (30) days of its receipt of complaint counsel's report, the committee on complaints shall take the following action:

(a) If upon review of the record, complaint counsel's report and any written response by the accused attorney, the committee determines that there is not reasonable ground to believe that the accused attorney has been guilty of unprofessional conduct or conduct evincing unfitness for the practice of law, the committee may either re-refer the matter to complaint counsel for further investigation or may dismiss the complaint and retire the file. In the latter event, the person filing the complaint, the accused attorney and the Executive Director of the Mississippi Bar shall be given written notice of the committee's determination.

(b) If upon review of the record, complaint counsel's report and any written response by the accused attorney, the committee determines that there is reasonable ground to believe that the accused attorney has been guilty of unprofessional conduct or conduct evincing unfitness for the practice of law, and is of the further opinion that a reprimand of the accused attorney is all that justice requires and will adequately afford the disciplinary sanctions required by the particular circumstances, the committee may administer a private reprimand, or it may, in its discretion, make public the fact of the reprimand by having the same delivered in open court by the chancery or circuit court of the county of the accused attorney. However, such action shall not be taken except upon proper notice and hearing, such notice and hearing to be upon the same formal requirements and assuring to the accused attorney the same rights and privileges as provided in Section 73-3-321 et seq. for hearings upon complaints which, if proven, would warrant suspension or disbarment. Further, any decision of the complaint tribunal to issue a reprimand shall be appealable in the same manner and to the same extent as provided in Section 73-3-329. The committee, in its discretion, may require the accused attorney to appear before it for delivery of the reprimand or may forward it to him by registered mail. In any event, written notice of the delivery of such reprimand shall be given to the person filing the complaint, the clerk of the court, the Executive Director of the

Mississippi Bar, and to the judges of the circuit and chancery court districts of the accused attorney.

(c) If the committee determines there is reasonable cause to believe the accused attorney is guilty of such conduct, which, if proven, would warrant suspension for a definite or an indefinite period or permanent disbarment, the committee shall direct complaint counsel in writing to prepare and file a formal complaint against the accused attorney. Complaint counsel shall prosecute the case to conclusion, unless the President of the Mississippi Bar, in his sole discretion, shall appoint one or more active members of the Mississippi Bar to either assist complaint counsel or to serve independently as trial attorney or attorneys in the prosecution of the proceeding to conclusion.

SOURCES: Laws, 1974, ch. 566, § 9; Laws, 1981, ch. 480, § 1; reenacted, Laws, 1983, ch. 302, § 34; Laws, 1991, ch. 526, § 37; reenacted, Laws, 1992, ch. 515, § 37, eff from and after July 1, 1992.

Cross References — Judgment of complaint tribunal reprimanding and admonishing attorney, see § 73-3-327.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Committee on professional responsibility — powers and duties, see Rules of Discipline for the Mississippi State Bar, Rule 7.

JUDICIAL DECISIONS

1. In general.
2. Practice and procedure.
3. Application to particular cases.

1. In general.

Complaints committee may recommend that attorney who refuses public reprimand offered by committee and exercises right to de novo hearing before complaints tribunal be suspended or disbarred. Myers v. Mississippi State Bar, 480 So. 2d 1080 (Miss. 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 23 (1986).

While no specific guidelines exist as to action to be taken by complaint committee upon receiving complaint counsel's report, committee decisions are informed by considerations in code of professional responsibility and other practical factors peculiar to case which afford sufficient legal guidance to committee that § 73-3-319 is not void for vagueness. Myers v. Mississippi State Bar, 480 So. 2d 1080 (Miss. 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 23 (1986).

2. Practice and procedure.

Time limitations in §§ 73-3-319, 73-3-325 are directory rather than jurisdictional and 17-day delay in filing of formal complaint does not justify dismissal of complaint; nor are accused attorneys prejudiced by more protracted delay in holding tribunal hearing when in some instances delays have been requested by attorneys and in one instance delay is due to material case pending before Supreme Court. Myers v. Mississippi State Bar, 480 So. 2d 1080 (Miss. 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 23 (1986).

Complaints committee has inherent authority to provide for procedures whereby adverse decisions can be appealed to disciplinary tribunal, subject to statutory limitations. Myers v. Mississippi State Bar, 480 So. 2d 1080 (Miss. 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 23 (1986).

Petitioner who files complaint with committee on complaints charging former attorney with unprofessional conduct has no right to appeal dismissal of complaint. Smith v. Mississippi State Bar, 475 So. 2d 148 (Miss. 1985).

When attorney is given notice and hearing on charge of exertion of undue influence and violation of fiduciary capacity, which charge is found to be baseless, complaint committee must give attorney additional notice and hearing prior to issuing reprimand based on charge of conflict of interest. A Miss. Att'y v. Mississippi State Bar, 471 So. 2d 1230 (Miss. 1985).

Dismissal by committee of complaint against attorney is not judicial determination on merits, but rather is analogous to review by grand jury, and is not res judicata bar against subsequent complaint based on same allegations as those in dismissed complaint. Clark v. Mississippi State Bar Ass'n, 471 So. 2d 352 (Miss. 1985).

There was no violation of §§ 73-3-317 and 73-3-319, by continuing the investigation into alleged violations of disciplinary rules by a Mississippi attorney after the investigatory hearing, or by use of subsequently discovered evidence, where, even though the attorney had not been notified of the subsequent investigation when it had occurred, he received sufficient notice upon receipt of complaint counsel's report that further investigation had been conducted, and where the attorney had had sufficient time to respond to the report between the time he received his copy and the time a formal complaint was filed against him, and had chosen not to do so. A Miss. Att'y v. Mississippi State Bar, 453 So. 2d 1023 (Miss. 1984).

An attorney cannot be compelled to testify at a hearing in the investigatory stages of a state bar disciplinary proceeding or to respond to a subpoena duces tecum prior to the filing of a formal complaint against him by the complaint committee; the legislature did not contemplate forced cooperation by an attorney in the investigative stages. Mississippi State Bar v. Attorney-Respondent in Disciplinary Proceedings, 367 So. 2d 179 (Miss. 1979).

3. Application to particular cases.

Disbarment of attorney by Complaint Tribunal was reversed and attorney suspended for one year because bulk of evidence consisted chiefly of oral inculpatory statements or confessions allegedly made by attorney to law enforcement officers and members of grand jury, while there was lack of direct or documentary evidence. Hoffman v. Mississippi State Bar Ass'n, 508 So. 2d 1120 (Miss. 1987).

120-day suspension of attorney by Mississippi Bar Complaint Tribunal vacated due to existence and nature of extenuating circumstances and ordered that attorney receive public reprimand, where he had accepted employment and then neglected case, though he regularly told client that he was handling matter. Vining v. Mississippi State Bar Ass'n, 508 So. 2d 1047 (Miss. 1987).

Granting of default judgment against attorney in disciplinary proceeding was proper where attorney made no responsive pleadings to formal complaint at any time. Vining v. Mississippi State Bar Ass'n, 508 So. 2d 1047 (Miss. 1987).

Private reprimand may be issued to attorney for insurance company on basis of attorney's civil trespass consisting of entry into burned remains of building, through unlocked door, without notice to or permission from insured lessee of building, and without identifying himself to insured lessee as insurer's representative, provided that wording of reprimand must adequately describe nature of offense and inform members of bench of nature of attorney's unprofessional conduct and must also reiterate confidentiality of private reprimand under § 73-3-343 and penalties for violation of confidence. An Att'y v. Mississippi State Bar Ass'n, 481 So. 2d 297 (Miss. 1985).

RESEARCH REFERENCES

ALR. Failure to communicate with client as basis for disciplinary action against attorney. 80 A.L.R.3d 1240.

Extent and determination of attorney's right or privilege against self-incrimination in disbarment or other disciplinary proceedings — post-Spevack cases. 30 A.L.R.4th 243.

Attorney's misrepresentation to court of his state of health or other personal matter in seeking trial delay as ground for disciplinary action. 61 A.L.R.4th 1216.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in matters involving formation or dissolution of business organization as ground for disciplinary action-modern cases. 63 A.L.R.4th 656.

Bringing of frivolous civil claim or action as ground for discipline of attorney. 85 A.L.R.4th 544.

Soliciting client to commit illegal or immoral act as ground for discipline of attorney. 85 A.L.R.4th 567.

Am Jur. 7 Am. Jur. 2d, Attorneys at Law §§ 29 et seq.

CJS. 7A C.J.S., Attorney and Client §§ 233 et seq.

Law Reviews. 1981 Mississippi Supreme Court Review: Administrative Law. 52 Miss. L. J. 377, June, 1982.

1991 Mississippi Supreme Court Review: Misconduct of attorneys and judges. 61 Miss. L. J. 686, Winter, 1991.

§ 73-3-321. Filing and prosecution of formal complaints; requirements of complaint and other pleadings; service.

(1) All formal complaints shall be filed in the court and shall be prosecuted in the name of the Mississippi Bar. The formal complaint and other pleadings shall comply with the following requirements:

(a) The formal complaint shall be filed with the clerk of the court within thirty (30) days of the receipt by complaint counsel of the written notice from the committee on complaints directing him to file said complaint.

(b) The complaint shall set forth with fair and reasonable certainty the particulars of the offense of which the accused attorney is charged.

(c) All matters of defense or abatement asserted by the accused attorney shall be filed within twenty (20) days after a copy of the complaint is served upon the accused attorney. Provided that upon application to the clerk the accused attorney may be granted such additional time as the circumstances warrant.

(d) The complaint shall be personally served upon the accused attorney by the Executive Director of the Mississippi Bar or by the complaint counsel unless the accused attorney shall waive the same by execution and delivery to the clerk of receipt and waiver of personal service.

(2) The procedure for suspending an attorney from the practice of law for being out of compliance with an order for support, as defined in Section 93-11-153, and the procedure for reinstating an attorney to practice law after suspension for being out of compliance, and the payment of any fees for reinstating an attorney to practice law after suspension for being out of compliance, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this article, the provisions of Section 93-11-157 or 93-11-163, as the case be, shall control.

SOURCES: Laws, 1974, ch. 566, § 10; reenacted, Laws, 1983, ch. 302, § 35; Laws, 1991, ch. 526, § 38; reenacted, Laws, 1992, ch. 515, § 38; Laws, 1996, ch. 507, § 23, eff from and after July 1, 1996.

Cross References — Notice and hearing required in cases where committee on complaints decides reprimand is sufficient sanction, see § 73-3-319.

Suspension of state issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Complaint tribunal — powers and duties see Rules of Discipline for the Mississippi State Bar, Rule 8.

JUDICIAL DECISIONS

1. In general.

A default judgment may be granted in an attorney disciplinary proceeding where a formal complaint has been received, a waiver of service of process and an entry of appearance have been filed, no answer or any other responsive pleading has been filed, and a motion for default judgment has been received. Barfield v. Mississippi State Bar Ass'n, 547 So. 2d 46 (Miss. 1989).

§ 73-3-323. Complaint tribunal; designation; per diem, mileage and necessary expenses.

Within five (5) days after the formal complaint is filed with the clerk of the court by complaint counsel, the chief justice shall designate a complaint tribunal to conduct a hearing on the formal complaint and to determine the matter; provided, however, the complaint tribunal so designated by the chief justice shall not be composed of members from the same supreme court district as that within which the accused attorney resides. The chief justice shall designate one (1) member of the complaint tribunal to be the presiding judge thereof. Any member of the complaint tribunal who is not an elected judge or chancellor shall be entitled to a per diem as authorized by Section 25-3-69 for each day's service in attending hearings or necessary business of the tribunal and shall receive reimbursement for necessary expenses and mileage as is authorized by Section 25-3-41. Said per diem and expense reimbursement, subject to funds being appropriated therefor, shall be paid from any available funds appropriated to the Supreme Court.

SOURCES: Laws, 1974, ch. 566, § 11; reenacted, Laws, 1983, ch. 302, § 36; reenacted, Laws, 1991, ch. 526, § 39; reenacted, Laws, 1992, ch. 515, § 39; Laws, 1993, ch. 444, § 1, eff from and after July 1, 1993.

Cross References — Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Complaint tribunal — powers and duties see Rules of Discipline for the Mississippi State Bar, Rule 8.

JUDICIAL DECISIONS

1. In general.

An attorney disciplinary proceeding would be remanded to a complaint tribunal pursuant to § 73-3-323, where the attorney's motion to remand, that there was other evidence not introduced at his contempt trial, which should have been made part of the record in the disciplinary proceeding. Mississippi State Bar v. Mississippi Att'y, 437 So. 2d 1227 (Miss. 1983).

§ 73-3-325. Complaint tribunal; hearing; notice; rules.

Within forty-five (45) days after the designation by the chief justice of the complaint tribunal to hear and determine the formal complaint, the complaint tribunal shall conduct a hearing of the matter at such place and within such hours as determined by the tribunal; provided, however, such hearing shall be held and conducted within the county in which the accused attorney resides and provided further that for good cause shown the complaint tribunal may grant a reasonable continuance or continuances of said hearing. Written notice of the date, time and place of said hearing shall be mailed by the clerk of the court at the direction of the presiding judge of the complaint tribunal to the accused attorney by registered mail, return receipt requested, no less than ten (10) days prior to the commencement of said hearing.

All hearings by a complaint tribunal shall be a full evidentiary hearing, conducted on an adversary basis. The rules of evidence and procedure applicable to and followed by the chancery courts of Mississippi shall apply to such hearings. A duly qualified court reporter shall be in attendance and shall make a full and complete transcript of the proceedings. The hearing by the complaint tribunal shall be closed, unless the accused attorney shall request a public hearing; and the complaint tribunal shall have the right and duty to impose such reasonable restrictions as it may deem necessary or appropriate to insure an orderly expeditious and impartial proceeding.

SOURCES: Laws, 1974, ch. 566, § 12; reenacted, Laws, 1983, ch. 302, § 37; reenacted, Laws, 1991, ch. 526, § 40; reenacted, Laws, 1992, ch. 515, § 40, eff from and after July 1, 1992.

Cross References — Notice and hearing required in cases where committee on complaints decides reprimand is sufficient sanction, see § 73-3-319.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Complaint tribunal — powers and duties see Rules of Discipline for the Mississippi State Bar, Rule 8.

JUDICIAL DECISIONS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 73-3-147.

1. In general.

The Rules of Discipline of the Mississippi State Bar prohibit an attorney for a person lodging a complaint with the Mississippi State Bar from taking part in the Bar's disciplinary hearings or proceedings except to be present, confer with, and advise the complainant who serves as a witness in such proceedings. In re Attorney A, 565 So. 2d 1139 (Miss. 1990).

Time limitations in §§ 73-3-319, 73-3-325 are directory rather than jurisdictional and 17-day delay in filing of formal complaint does not justify dismissal of complaint; nor are accused attorneys prejudiced by more protracted delay in holding tribunal hearing when in some instances delays have been requested by attorneys and in one instance delay is due to material case pending before Supreme Court. Myers v. Mississippi State Bar, 480 So. 2d 1080 (Miss. 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 23 (1986).

Any harm resulting from deprivation of right of accused attorney to confront and cross-examine accuser at investigatory hearing is subsequently eliminated when complaints tribunal allows confrontation and cross-examination at full evidentiary hearing. Myers v. Mississippi State Bar, 480 So. 2d 1080 (Miss. 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 23 (1986).

2.-5. [Reserved for future use.]

6. Under former § 73-3-147.

Statutes, regulating the bar and providing for procedure against members for misconduct, are generally regarded as prescribing a preferential method of procedure, which the court may, and in most cases ought, as a matter of discretion, to require to be followed but which is not exclusive; such statutes are not restrictive of the inherent powers which reside in courts to inquire into the conduct of their own officers, and to discipline them for misconduct. In re Higgins, 194 Miss. 838, 13 So. 2d 829 (1943).

The fact that there was not a quorum of the bar commissioners present at meeting when disbarment proceedings were directed to be instituted against erring attorney did not invalidate such proceedings, since, apart from, and independent of, the statutes regulating the bar and the conduct of its members, the superior courts of this state have inherent power derived from their constitutional establishment to discipline members of the bar for misconduct. In re Higgins, 194 Miss. 838, 13 So. 2d 829 (1943).

Judgment of disbarment affirmed where all the charges preferred, when considered together and in the light of their rational relationship as a whole, were sufficient and were supported by the preponderance of the credible evidence, notwithstanding that some of the charges, if standing alone, would not be sufficient to sustain an order of disbarment. In re Higgins, 194 Miss. 838, 13 So. 2d 829 (1943).

RESEARCH REFERENCES

ALR. Effect of acquittal or dismissal in criminal prosecution as barring disciplinary action against attorney. 76 A.L.R.3d 1028.

Restricting access to records of disciplinary proceedings against attorneys. 83 A.L.R.3d 749.

Discovery or inspection of state bar records of complaints against or investigations of attorneys. 83 A.L.R.3d 777.

Attorneys at law: delay in prosecution of disciplinary proceeding as defense or mitigating circumstance. 93 A.L.R.3d 1057.

Admissibility of lie detector test results, or of offer or refusal to take test, in attorney disciplinary proceeding. 79 A.L.R.4th 576.

Appointment of counsel for attorney facing disciplinary charges. 86 A.L.R.4th 1071.

Am Jur. 7 Am. Jur. 2d, Attorneys at Law §§ 29 et seq., 101 et seq.

2 Am. Jur. Pl & Pr Forms (Rev), Attorneys at Law, Forms 287, 288.

CJS. 7A C.J.S., Attorney and Client §§ 99-103.

§ 73-3-327. Complaint tribunal; written opinion; judgment.

(1) At the conclusion of the hearing the complaint tribunal, upon the majority vote of the members of such tribunal, shall render a written opinion incorporating a finding of fact and a judgment thereon. The judgment of the complaint tribunal may provide the following:

(a) Exonerate the accused attorney and dismiss the complaint.

(b) Reprimand and admonish the attorney, as provided in Section 73-3-319(b) of this article.

(c) Suspend the attorney from the practice of law for any period of time.

(d) Permanently disbar the attorney.

(2) In cases in which the Clerk of the Supreme Court has received notice from the division that the attorney is out of compliance with an order for

support, as defined in Section 93-11-153, the Supreme Court shall suspend the attorney from the practice of law until such time as the attorney may be reinstated to practice law because of the attorney's compliance with the requirements of Section 93-11-157 or 93-11-163, as the case may be.

SOURCES: Laws, 1974, ch. 566, § 13; reenacted, Laws, 1983, ch. 302, § 38; reenacted, Laws, 1991, ch. 526, § 41; reenacted, Laws, 1992, ch. 515, § 41; Laws, 1996, ch. 507, § 24, eff from and after July 1, 1996.

Cross References — Suspension of state issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Complaint tribunal — powers and duties see Rules of Discipline for the Mississippi State Bar, Rule 8.

JUDICIAL DECISIONS

1. In general.
2. Conduct warranting disbarment.
3. Conduct warranting suspension.
4. Conduct warranting private reprimand.

5.-10. [Reserved for future use.]

11. Under former § 73-3-53.

1. In general.

Factors generally considered for imposition of sanctions for attorney misconduct are (1) the nature of the misconduct, (2) the need to deter similar misconduct, (3) preservation of the dignity and reputation of the profession, (4) protection of the public and (5) sanctions imposed in similar cases. Steighner v. Mississippi State Bar, 548 So. 2d 1294 (Miss. 1989).

The Supreme Court may discipline an attorney for conduct which occurs outside the attorney-client relationship. Steighner v. Mississippi State Bar, 548 So. 2d 1294 (Miss. 1989).

A default judgment may be granted in an attorney disciplinary proceeding where a formal complaint has been received, a waiver of service of process and an entry of appearance have been filed, no answer or any other responsive pleading has been filed, and a motion for default judgment has been received. Barfield v. Mississippi State Bar Ass'n, 547 So. 2d 46 (Miss. 1989).

There is no standard as to what punishment for particular misconduct ought to be and cases are considered on a case-by-case basis. Goeldner v. Mississippi State Bar Ass'n, 525 So. 2d 403 (Miss. 1988).

By suspending attorney from practice of law on basis of attorney's failure to adequately administer legal services program which, as entity, undertook to represent criminal defendant, when attorney has been charged with representing defendant and in failing to perfect appeal or give notice of withdrawal, complaint tribunal has impermissibly deprived attorney of right to hearing and to defend on specific charge alleged in complaint. Myers v. Mississippi State Bar, 480 So. 2d 1080 (Miss. 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 23 (1986).

Complaints committee may recommend that attorney who refuses public reprimand offered by committee and exercises right to de novo hearing before complaints tribunal be suspended or disbarred. Myers v. Mississippi State Bar, 480 So. 2d 1080 (Miss. 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 23 (1986).

2. Conduct warranting disbarment.

An attorney's conduct warranted disbarment where he neglected cases, failed to reasonably inform clients of the status of their cases, failed to return client property and render an accounting of client funds, and misrepresented services provided in exchange for quoted fees, and he had previously received 2 private reprimands and two informal admonitions but continued to exhibit a tendency to deal with his clients in a manner which left them uninformed, frustrated, and justifiably dissatisfied with the lack of representation and the attorney-client relationship in general. Stegall v. Mississippi Bar, 618 So. 2d 1291 (Miss. 1993).

An attorney's conviction of the crime of falsifying a loan closing statement submitted to the United States Department of Housing and Urban Development in violation of 18 USCS § 1012 warranted automatic disbarment. Mississippi Bar v. McHann, 618 So. 2d 702 (Miss. 1993), reinstatement granted, 691 So. 2d 422 (Miss. 1977).

An attorney's conversion of clients' funds from his trust account warranted permanent disbarment, even though no previous complaint had been made against him to the State Bar, and he admitted his wrongdoing and expressed remorse to the tribunal, since dishonest conduct by an attorney with his or her own client goes to the very core of a lawyer's fitness to practice law. Reid v. Mississippi State Bar, 586 So. 2d 786 (Miss. 1991).

An attorney's conduct violated § 73-3-35 and certain disciplinary rules of the Code of Professional Responsibility for the Bar, warranting disbarment, where the attorney deposited large contingencies into his personal checking accounts without informing his employer of his receipt of the funds, he used the funds for payment of personal obligations, he showed a lack of remorse, and he consistently maintained that he had committed no wrongdoing or ethical violations until being confronted with ironclad proof, at which time he changed his testimony from that given at the investigatory hearing and previous bar proceedings. Tucker v. Mississippi State Bar, 577 So. 2d 844 (Miss. 1991).

An attorney's conduct warranted disbarment where he misrepresented his law school credentials and admission to another state's bar in applying for employment with a law firm. Barfield v. Mississippi State Bar Ass'n, 547 So. 2d 46 (Miss. 1989).

The conclusion of the Complaint Tribunal that an attorney convicted of nine counts of deceiving and conspiring to defraud the United States government should be suspended from the practice of law pursuant to § 73-3-327 would be vacated and the penalty of disbarment imposed pursuant to the authority of § 73-3-329, without regard to the automatic disbarment provisions of § 73-3-41 and former § 73-3-53, where the charges of which the attorney had been convicted involved moral turpitude. Mississippi State Bar v. Phillips, 385 So. 2d 943 (Miss. 1980).

3. Conduct warranting suspension.

A one-year suspension from the practice of law was warranted where the attorney knowingly and intentionally lied to his clients over a 2-year period regarding the status of their case, since his conduct was not mere negligence but involved intentional misrepresentation to cover his negligence. Underwood v. Mississippi Bar, 618 So. 2d 64 (Miss. 1993), reinstatement granted, 649 So. 2d 825 (Miss. 1995).

Attorney who discontinues representation of client who attorney has undertaken to represent in court of record before attorney has been properly relieved by court, pursuant to motion filed by attorney with court with proper notice to client, may be suspended from practice of law. Myers v. Mississippi State Bar, 480 So. 2d 1080 (Miss. 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 23 (1986).

4. Conduct warranting private reprimand.

An attorney's advice to an adverse party in a civil action arising from an automobile accident, that she did not need to worry about the matter and that she did not need to do anything about it, violated the prohibition against giving advice to an unrepresented person other than advice to secure counsel, and warranted a private reprimand. Attorney Q v. Mississippi State Bar, 587 So. 2d 228 (Miss. 1991), cert. denied, 502 U.S. 1098, 112 S. Ct. 1179, 117 L. Ed. 2d 423 (1992).

An attorney's conduct in misrepresenting facts to a client, and misleading and being untruthful to a client, warranted a private reprimand, even though the attorney had been "candid, humble, forthcoming, and freely admitted his conduct," the client had not been prejudiced by the attorney's conduct, and the attorney had no record of prior misconduct, since the attorney's conduct reflected poorly upon attorneys and the legal profession. Mississippi State Bar v. Attorney D, 579 So. 2d 559 (Miss. 1991).

5.-10. [Reserved for future use.]

11. Under former § 73-3-53.

Miss Code § 73-3-301, et seq., rather than Miss Code § 73-3-41 and former § 73-3-53, were applicable in an application for reinstatement to the Mississippi State Bar following disbarment on the ground of conviction of federal felonies involving moral turpitude; accordingly, petitioner would be reinstated where the state bar admitted all the averments and facts of the petition, which set out that no claims had been made, or were contemplated, for restitution of money, that he had conducted himself in a manner beyond criticism, that he had been able to obtain employment and had supplied the needs of his family, that he had continued to be active in community and civic activities and had been a good citizen during the period of his disbarment, and that if he was reinstated, he would be a valuable member of the Mississippi State Bar in the future and would conduct himself in such way as to be a credit to the state bar and to the State of Mississippi. Phillips v. Mississippi State Bar, 427 So. 2d 1380 (Miss. 1983).

The conclusion of the Complaint Tribunal that an attorney convicted of nine counts of deceiving and conspiring to defraud the United States government should be suspended from the practice of law pursuant to § 73-3-327 would be vacated and the penalty of disbarment imposed pursuant to the authority of § 73-3-329, without regard to the automatic disbarment provisions of § 73-3-41 and former § 73-3-53, where the charges of which the attorney had been convicted involved moral turpitude. Mississippi State Bar v. Phillips, 385 So. 2d 943 (Miss. 1980).

Evidence disclosing attorney stirred up litigation and purchased papers coming into employee's hands and wrongfully withheld from employer held to warrant disbarment. In re Latham, 162 Miss. 233, 139 So. 457 (1932).

Supreme Court has inherent and original jurisdiction to take cognizance of disbarment proceedings against attorney filed in first instance in supreme court. In re Steen, 160 Miss. 874, 134 So. 67 (1931).

Supreme court should retain jurisdiction of disbarment proceedings instituted therein against attorney, though jurisdiction is concurrent with that of circuit and chancery courts. In re Steen, 160 Miss. 874, 134 So. 67 (1931).

"Misbehavior" refers only to misbehavior demonstrating attorney's unfitness attending particular relationship; attorney's contract to obtain appointment of another to public office was not of itself sufficient to warrant disbarment. Ex parte Redmond, 156 Miss. 439, 125 So. 833 (1930).

Court may prescribe procedure in disbarment proceedings. Ex parte Cashin, 128 Miss. 224, 90 So. 850 (1922).

This section [Code 1942, § 8675] does not preclude the circuit court from acting on the merits of a petition by a disbarred attorney for reinstatement, and it may restore such attorney to his privileges. Ex parte Redmond, 120 Miss. 536, 82 So. 513 (1919).

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

2 Am. Jur. Pl & Pr Forms (Rev), Attorneys at Law, Forms 329-331.

Practice References. L. Ray Patterson, Lawyer's Law: Procedural, Malpractice & Disciplinary Issues (Matthew Bender).

§ 73-3-329. Complaint tribunal; appeal from judgment; record on appeal; scope of review; rules of practice.

(1) The entire record of the proceeding of the complaint tribunal shall be filed with the clerk of the court within thirty (30) days after the conclusion of the hearing or within such additional time as the clerk, on motion therefor, may allow.

(2) If no appeal from the judgment of the complaint tribunal is perfected within thirty (30) days from the date of said judgment, the judgment of the complaint tribunal shall be final.

(3) Either the attorney or the Mississippi Bar shall have the right to an appeal to the court, which appeal shall be perfected within thirty (30) days of the date of the judgment of the complaint tribunal by the aggrieved party filing a notice of appeal with the clerk of the court.

(4) The record on appeal shall consist of the formal complaint, all other pleadings, the transcript of the testimony and the written opinion and judgment of the complaint tribunal.

(5) On appeal, the court may review all of the evidence and the law and the findings and conclusions of the complaint tribunal and it may make such findings and conclusions and render such order as it may find to be appropriate based upon the whole record.

(6) The rules of practice and procedure for the filing of briefs and oral arguments governing appeals from the chancery or circuit courts of Mississippi shall apply to and govern appeals from the judgment of the complaint tribunals; provided, however, whenever possible, the court shall advance and expedite the cause on its docket.

(7) Actions taken by the Supreme Court in suspending an attorney from the practice of law when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of the suspension of an attorney from the practice of law that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SOURCES: Laws, 1974, ch. 566, § 14; reenacted, Laws, 1983, ch. 302, § 39; Laws, 1991, ch. 526, § 42; reenacted, Laws, 1992, ch. 515, § 42; Laws, 1996, ch. 507, § 25, eff from and after July 1, 1996.

Cross References — Applicability of provisions of this section to appeal from reprimand, see § 73-3-319.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Appeals from complaint tribunal, see Rules of Discipline for the Mississippi State Bar, Rule 9.

JUDICIAL DECISIONS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 73-3-155.

1. In general.

An appeal by the Mississippi State Bar to enhance an attorney's punishment for his violation of disciplinary rules did not violate the attorney's constitutional right against double jeopardy. Mississippi State Bar v. Blackmon, 600 So. 2d 166 (Miss. 1992).

The Supreme Court has the independent authority to reassess the punishment meted out by the Complaint Tribunal and to increase or decrease the punishment as it deems proper; there is no standard as to what punishment for particular misconduct ought to be, and cases are considered on a case by case basis. Mississippi State Bar v. Attorney D, 579 So. 2d 559 (Miss. 1991).

In an attorney disciplinary proceeding, the state supreme court is the supreme trier of fact, and as a matter of law, is not bound by any findings of fact made by the complaint tribunal. However, the state supreme court is not prohibited from giving to findings of fact made by such complaints tribunal such merit as in its judgment they may deserve. The state supreme court has independent authority to reassess the punishment imposed in the disciplinary proceedings and modify the punishment as it deems proper. Goeldner v. Mississippi State Bar Ass'n, 525 So. 2d 403 (Miss. 1988).

While the Supreme Court gives deference to the findings of the Complaint Tribunal, the court has the nondelegable duty of ultimately finding the facts in attorney disciplinary proceedings, and making such conclusion and order from those findings as the court deems must be reached. Mississippi State Bar Ass'n v. Strickland, 492 So. 2d 567 (Miss. 1986).

Supreme Court remains free to reevaluate sentence imposed by complaint tribunal regardless of whether matter is brought before court on appeal from public reprimand under § 73-3-329, as amended, or on appeal from suspension and private reprimand under pre-amendment "policy". Myers v. Mississippi State Bar, 480 So. 2d 1080 (Miss. 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 23 (1986).

In reviewing disciplinary proceedings against an attorney, the Supreme Court, in the exercise of its sound discretion, is by no means prohibited from giving to findings of fact made by the Complaint Tribunal such weight as in its judgment they may deserve; nevertheless, pursuant to § 73-3-329(5), it is the court's nondelegable duty and responsibility to make its own findings of fact in such cases. Levi v. Mississippi State Bar, 436 So. 2d 781 (Miss. 1983).

The conclusion of the Complaint Tribunal that an attorney convicted of nine counts of deceiving and conspiring to defraud the United States government should be suspended from the practice of law pursuant to § 73-3-327 would be vacated and the penalty of disbarment imposed pursuant to the authority of § 73-3-329, without regard to the automatic disbarment provisions of § 73-3-41 and former § 73-3-53, where the charges of which the attorney had been convicted involved moral turpitude. Mississippi State Bar v. Phillips, 385 So. 2d 943 (Miss. 1980).

2.-5. [Reserved for future use.]

6. Under former § 73-3-155.

In a proceeding for the reinstatement of a disbarred attorney, the supreme court is the final judge of the facts, and the judgment to be rendered, and the rule that a judgment of the lower court will not be reversed on a question of fact unless it affirmatively appears upon the face of the record that the cause was decided contrary to the evidence is inapplicable. Mississippi State Bar Ass'n v. Wade, 250 Miss. 625, 167 So. 2d 648 (1964).

The supreme court on appeal from disbarment, will review all questions of law and fact. In re Denman, 224 Miss. 92, 79 So. 2d 536 (1955).

In a disbarment proceeding the supreme court is the final judge of the facts and of the judgment to be rendered thereon and the proof of guilt must be clear and convincing. In re Quinn, 223 Miss. 660, 78 So. 2d 883 (1955).

The supreme court can review the findings of fact made by the chancellor or circuit judge and the court is not bound by such findings on conflicting evidence. In re Poole, 222 Miss. 678, 76 So. 2d 850 (1955).

RESEARCH REFERENCES

Am Jur. 2 Am. Jur. Pl & Pr Forms (Rev), Attorneys at Law, Forms 311 et seq.

CJS. 7A C.J.S., Attorney and Client §§ 109, 110, 112-115.

§ 73-3-331. Complaint tribunal; effect of judgment of suspension or disbarment; appeal as supersedeas.

Upon a final judgment of suspension or disbarment by a complaint tribunal, the convicted attorney shall not be privileged to practice law within this state unless and until he is restored the privilege of practice as hereinafter provided. Appeal from a judgment by the complaint tribunal shall operate as a supersedeas. An appeal from a judgment of the Supreme Court suspending an attorney from the practice of law when required by Section 93-11-157 or 93-11-163 may operate as a supersedeas only as may be allowed under Section 93-11-157 or 93-11-163, as the case may be.

SOURCES: Laws, 1974, ch. 566, § 15; reenacted, Laws, 1983, ch. 302, § 40; reenacted, Laws, 1991, ch. 526, § 43; reenacted, Laws, 1992, ch. 515, § 43; Laws, 1996, ch. 507, § 26, eff from and after July 1, 1996.

Cross References — Suspension of state issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Complaint tribunal — powers and duties, see Rules of Discipline for the Mississippi State Bar, Rule 8.

Appeals from complaint tribunal, see Rules of Discipline for the Mississippi State Bar, Rule 9.

RESEARCH REFERENCES

ALR. Disbarment or suspension of attorney in one state as affecting right to continue practice in another state. 81 A.L.R.3d 1281.

Validity and construction of procedures to temporarily suspend attorney from practice, or place attorney on inactive status, pending investigation of, and action upon, disciplinary charges. 80 A.L.R.4th 136.

Am Jur. 31 Am. Jur. Trials 633, Defending Lawyers in Disciplinary Proceedings.

44 Am. Jur. Proof of Facts 2d 377, Legal Malpractice in Domestic Relations.

Practice References. L. Ray Patterson, Lawyer's Law: Procedural, Malpractice & Disciplinary Issues (Matthew Bender).

§ 73-3-333. Resignation by accused attorney during course of disciplinary proceedings; procedure; effect; section provides exclusive method.

At any stage of the disciplinary proceedings an accused attorney who is the subject of investigation may submit his resignation and agree to the entry by the court of a consent order of suspension or dismissal by submitting to the Board of Commissioners an affidavit stating that he desires to resign from the bar and to surrender his privilege to practice law, and that:

(a) His resignation is freely and voluntarily rendered; he is not being subjected to coercion or duress; and he is fully aware of the implications of submitting his resignation.

(b) He is aware that there is pending an investigation into allegations that he has been guilty of unprofessional conduct, the nature of which he shall specifically set forth.

(c) He acknowledges that the material facts upon which the complaint is based are true.

(d) He submits his resignation because he knows that if charges were predicated on the misconduct under investigation, he could not defend himself successfully against them.

Notwithstanding the provisions of Section 73-3-315(e) to the contrary, upon receipt of said affidavit, the investigation or disciplinary procedure shall terminate, and the Board of Commissioners will present to the court an agreed order to be entered by the court either suspending or disbarring said attorney by consent, as the particular circumstances of the matter may require in the discretion of the Board of Commissioners. Said order shall be a public record, and certified copies thereof shall be mailed to the judges of the circuit and chancery court districts within which the attorney resides.

Once a complaint has been filed against an attorney, this shall be the exclusive method for resignation pending the investigation and determination of said complaint, and no other resignation procedure will be permitted or recognized by the bar.

SOURCES: Laws, 1974, ch. 566, § 16; reenacted, Laws, 1983, ch. 302, § 41; Laws, 1991, ch. 526, § 44; reenacted, Laws, 1992, ch. 515, § 44, eff from and after July 1, 1992.

Cross References — Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Irrevocable resignations, see Rules of Discipline for the Mississippi State Bar, Rule 10.

Effect of resignation, see Rules of Discipline for the Mississippi State Bar, Rule 11.

RESEARCH REFERENCES

ALR. Propriety of attorney's resignation from bar in light of pending or potential disciplinary action. 54 A.L.R.4th 264.

§ 73-3-335. Modification or termination of suspension.

Any time after the entry of a final judgment of suspension and after the expiration of at least one-fourth (¼) of the period of the ordered suspension, the convicted attorney may file a petition in the court to modify or terminate said suspension; provided, however, any petition to modify or terminate subsequent to the initial petition shall not be filed within six (6) months from the date of the adverse determination of any prior petition. A filing fee of Two Hundred Fifty Dollars ($250.00) to defray the expense of investigating the matter shall be paid the Mississippi Bar upon the filing of each petition to modify or terminate. A copy of said petition shall be served upon the Mississippi Bar, and it shall be under a duty to investigate the matter, respond to the petition and appear at the hearing. Modification or termination of suspension shall be granted only upon a showing of good cause and exceptional circumstances.

The procedure for reinstating an attorney to practice law after suspension for being out of compliance with an order of support, as defined in Section 93-11-153, and the payment of any fees for reinstating an attorney to practice law after suspension for being out of compliance, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

SOURCES: Laws, 1974, ch. 566, § 17; reenacted, Laws, 1983, ch. 302, § 42; Laws, 1991, ch. 526, § 45; reenacted, Laws, 1992, ch. 515, § 45; Laws, 1996, ch. 507, § 27, eff from and after July 1, 1996.

Cross References — Suspension of state issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

A final judgment suspending an attorney may not be modified since the Mississippi Rules of Discipline supersede § 73-3-335 and Rule 12.4 provides that a "suspended attorney shall not file a petition for reinstatement until the expiration of the period of suspension." Mississippi State Bar v. Young, 523 So. 2d 323 (Miss. 1988).

RESEARCH REFERENCES

Am Jur. 31 Am. Jur. Trials 633, Defending Lawyers in Disciplinary Proceedings.

44 Am. Jur. Proof of Facts 2d 377, Legal Malpractice in Domestic Relations.

§ 73-3-337. Reinstatement.

Upon the termination of the period of suspension, the convicted attorney may be reinstated by the court, pursuant to a petition filed with the court and a copy thereof served upon the Mississippi Bar. A filing fee of Two Hundred Fifty Dollars ($250.00) to defray the expense of investigating the matter shall be paid the Mississippi Bar upon the filing of such petition. The Mississippi

Bar shall investigate the matter and report all relevant facts for the consideration of the court.

Any time after the expiration of three (3) years from and after the date of the final judgment of disbarment, the convicted attorney may petition the court for reinstatement. The petition shall be in writing and verified by the petitioner, and it shall set forth the full name, age, residence and mailing address of the petitioner, the offense or misconduct for which he was disbarred, a concise statement of the facts claimed to justify restoration and that he has made full amends and restitution to all persons, firms or legal entities, naming them, who may have suffered pecuniary loss by reason of the misconduct or offense for which he was disbarred. A copy of said petition shall be served on the Mississippi Bar, and a filing fee of Five Hundred Dollars ($500.00) to defray the expense of investigating the matter shall be paid the Mississippi Bar upon the filing of each petition. Any petition for reinstatement subsequent to the initial petition shall not be filed by the convicted attorney within one (1) year from the date of the adverse determination of any prior petition.

The court shall examine the petition and, if satisfied that it states sufficient grounds, shall set the same for hearing and shall cause the clerk of the court to serve each person named in the petition with a copy thereof by sending the same to them by registered mail. If the court deems it necessary or proper to so do, it may cause an investigation to be made by complaint counsel.

If the court is satisfied that all material allegations of the petition for reinstatement are true and that the ends of justice will be served, the court may reinstate the convicted attorney and enter judgment accordingly; provided, however, no judgment of reinstatement shall be entered by default or on an ex parte basis, and in all cases the court shall hear the Mississippi Bar and may hear any party named in the petition.

The procedure for reinstating an attorney to practice law after suspension for being out of compliance with an order of support, as defined in Section 93-11-153, and the payment of any fees for reinstating an attorney to practice law after suspension for being out of compliance, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

SOURCES: Laws, 1974, ch. 566, § 18; reenacted, Laws, 1983, ch. 302, § 43; Laws, 1991, ch. 526, § 46; reenacted, Laws, 1992, ch. 515, § 46; Laws, 1996, ch. 507, § 28, eff from and after July 1, 1996.

Cross References — Suspension of state issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Rules regarding reinstatement, see Rules of Discipline for the Mississippi State Bar, Rule 12.

JUDICIAL DECISIONS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 73-3-153.

1. In general.

A suspended attorney was entitled to reinstatement where he had been suspended for a period of 19 months, which was 7 months more than the original 12 months suspension ordered, and he presented evidence in support of his reinstatement, including his payment of restitution to the injured parties, his employment subsequent to the suspension, and letters concerning his moral fitness. In re Underwood, 649 So. 2d 825 (Miss. 1995).

An attorney who was disbarred after being convicted of perjury would be reinstated, in spite of the State Bar's argument that the attorney did not possess the requisite moral character because he was "convicted of committing perjury" and his "moral character when he committed those crimes was determined to be not good," where the attorney met his burden of proving that he had "rehabilitated himself and re-established the requisite moral character sufficient to entitle him to reinstatement"; the Bar's argument focused on the attorney's character at the time the offense was committed when it should have focused on his character since the time the offense was committed, since the conduct upon which the original suspension proceedings were based may not furnish grounds for denial of reinstatement. In re Nixon, 618 So. 2d 1283 (Miss. 1993).

Although the Rules of Discipline for the Mississippi Bar provide for reinstatement through petition, an order of automatic reinstatement is within the scope of the Supreme Court's exclusive and inherent jurisdiction of attorney discipline matters. Broome v. Mississippi Bar, 603 So. 2d 349 (Miss. 1992).

An attorney who was suspended from the practice of law following a felony conviction in the federal courts and who was disbarred 3 years later at the conclusion of his appeal of the federal conviction, was not denied equal protection or due process rights on the ground that he would be required to wait 3 years longer before reinstatement than an attorney who chose not to appeal a conviction. All disbarred attorneys are treated equally; the disparity of time arises when an attorney resists the disbarment pending his or her appellate procedures. Had the attorney accepted the disbarment following his conviction, no delay in entering a final order of disbarment would have resulted, and therefore there was no unequal treatment or denial of due process. Additionally, the attorney's disbarment was not retroactive to the date of his suspension since the attorney's initiative delayed the entry of the final order; retroactivity cannot be applied when the attorney seeks a stay of the final order. Mississippi State Bar v. Nixon, 562 So. 2d 1288 (Miss. 1990), reinstatement granted, 618 So. 2d 1283 (Miss. 1993).

When a suspended attorney petitions for reinstatement, the State Bar is allowed a reasonable time for response, but the Bar also has a responsibility to proceed with diligence and dispatch and detail. If there be substantial reasons (unrelated to the conduct for which the suspension was originally imposed) why the suspended attorney should not be reinstated, it is incumbent upon the Bar to advise the Supreme Court of those facts with specificity so that the Court might determine whether a proper balancing of the relevant interests requires appointment of a master for an evidentiary hearing on the reinstatement request. Haimes v. Mississippi State Bar, 551 So. 2d 910 (Miss. 1989).

A suspended attorney petitioning for reinstatement has the burden of proving his or her case, but the case that he or she must prove is not the same or as great as that demanded of one who has been disbarred. Implicit in the judgment of suspension, stopping short of disbarment, is that the attorney's character has not been shown so deficient that proof of general moral and professional rehabilitation be required. Haimes v. Mississippi State Bar, 551 So. 2d 910 (Miss. 1989).

Mere completion of service of a period of sentence does not automatically entitle a suspended attorney to reinstatement. Haimes v. Mississippi State Bar, 551 So. 2d 910 (Miss. 1989).

The burden of proving rehabilitation and re-establishment of requisite moral character is upon the attorney seeking the reinstatement. Mississippi State Bar v. Gautier, 538 So. 2d 772 (Miss. 1989).

Testimony of 11 witnesses in support of reinstatement of attorney who was disbarred after pleading guilty to drug charges, when combined with letters written on his behalf and an amicus curiae brief, signed by 46 local attorneys, all expressing belief that attorney had rehabilitated himself, constituted sufficient proof of his reformed character to merit reinstatement. Williams v. Mississippi State Bar Ass'n, 492 So. 2d 578 (Miss. 1986).

If disbarred attorney's failure to participate in organized religion had been determinative of the denial of his petition for reinstatement, then his constitutional rights would have been violated. Williams v. Mississippi State Bar Ass'n, 492 So. 2d 578 (Miss. 1986).

A petition for reinstatement to the Bar that was brought less than three years from the date of disbarment was premature, under § 73-3-339, since § 73-3-337, which controlled on the date of petitioner's disbarment, was no different in its effect from the current rule providing that an attorney may petition for reinstatement at any time after the expiration of three years from the date of final judgment of disbarment, rather than the date of the initial order suspending petitioner from the practice of law. McIntosh v. Mississippi State Bar, 449 So. 2d 1203 (Miss. 1984).

2.-5. [Reserved for future use.]

6. Under former § 73-3-153.

Where petitioner for reinstatement to practice law failed to produce creditable testimony sufficient to establish his repentance and rehabilitation, chancellor erred in authorizing his reinstatement to the practice of law, and the decree of the chancery court would be reversed and the former decree of a chancery court of another county disbarring petitioner from the practice of law would be affirmed and continued in full force. Mississippi State Bar Ass'n v. Wade, 250 Miss. 625, 167 So. 2d 648 (1964).

Reinstatement to practice law should be granted only where there has been a reformation of character of the disbarred attorney. Mississippi State Bar Ass'n v. Wade, 250 Miss. 625, 167 So. 2d 648 (1964).

Attorney, after being disbarred, may rehabilitate himself and reestablish his moral character so as to entitle him to reinstatement. Ex parte Marshall, 165 Miss. 523, 147 So. 791 (1933).

Fact that disbarred attorney seeking reinstatement refused to go into matter involved in disbarment trial held not indication of insufficient repentance, where to do so would require admission that he committed criminal offense. Ex parte Marshall, 165 Miss. 523, 147 So. 791 (1933).

Requirements for reinstatement of disbarred attorney are same as for original admission to bar, except that court may require greater degree of proof. Ex parte Marshall, 165 Miss. 523, 147 So. 791 (1933).

In determining whether disbarred attorney, seeking reinstatement, possesses good moral character, court may consider conduct prior to disbarment. Ex parte Marshall, 165 Miss. 523, 147 So. 791 (1933).

Main question on application by disbarred attorney for reinstatement is whether he possesses necessary character to guarantee faithful discharge of duties as lawyer and assistance in administration of justice. Ex parte Marshall, 165 Miss. 523, 147 So. 791 (1933).

In determining moral character of disbarred attorney seeking reinstatement, opinion of public, when settled and deliberate, is highest evidence thereof. Ex parte Marshall, 165 Miss. 523, 147 So. 791 (1933).

In determining moral character of disbarred attorney seeking reinstatement, estimate of witnesses intimately acquainted with attorney is admissible. Ex parte Marshall, 165 Miss. 523, 147 So. 791 (1933).

Evidence held to support finding that disbarred attorney had lived exemplary life, had rehabilitated himself since disbarment, and was worthy of being reinstated. Ex parte Marshall, 165 Miss. 523, 147 So. 791 (1933).

Reinstatement of disbarred attorney is not surrender of power to discipline such attorney upon becoming false to his duties. Ex parte Marshall, 165 Miss. 523, 147 So. 791 (1933).

RESEARCH REFERENCES

ALR. Reinstatement of attorney after disbarment, suspension, or resignation. 70 A.L.R.2d 268.

Pardon as restoring public office or license or eligibility therefor. 58 A.L.R.3d 1191.

Restricting access to records of disciplinary proceedings against attorneys. 83 A.L.R.3d 749.

Discovery or inspection of state bar records of complaints against or investigations of attorneys. 83 A.L.R.3d 777.

Am Jur. 7 Am. Jur. 2d, Attorneys at Law §§ 115 et seq.

2 Am. Jur. Pl & Pr Forms (Rev), Attorneys at Law, Forms 341 et seq.

CJS. 7A C.J.S., Attorney and Client §§ 123-130.

§ 73-3-339. Conviction or entry of plea of nolo contendere for certain offenses.

Whenever any attorney subject to the disciplinary jurisdiction of the court shall be convicted in any state court or in any federal court, or enter a plea of guilty or a plea of nolo contendere therein, of any felony other than manslaughter or any violation of the United States Internal Revenue Code, or of any offense involving fraud, dishonesty, misrepresentation, deceit, failure to account for money or property of a client, or of any offense involving moral turpitude, a certified copy of the judgment of conviction shall be presented to the court by the Board of Commissioners. Upon the presentation of such certified copy of judgment, the court shall forthwith strike the name of the attorney so convicted or who entered such a plea from the rolls of the Mississippi Bar and order his immediate suspension from practice, pending an appeal and final disposition of disciplinary proceedings. Such attorney will be reinstated immediately upon the reversal of his conviction for the offense that has resulted in his automatic suspension, but such reinstatement shall not terminate any disciplinary proceeding then pending against the attorney.

A certified copy of the final judgment of conviction of an attorney for any offense hereinabove specified shall be conclusive evidence of his guilt of that offense in any disciplinary proceeding instituted against him and based on said conviction.

Upon the conviction of an attorney, or the entry by him of a plea of nolo contendere, for the above offenses, excluding manslaughter or any violation of the United States Internal Revenue Code, the Board of Commissioners shall immediately direct complaint counsel to institute a disciplinary proceeding in which the sole issue to be determined will be the extent of the final discipline to be imposed; provided, however, a disciplinary proceeding so instituted shall not be brought to hearing until all appeals from such conviction have been concluded.

The judge of any court within this state in which an attorney has been convicted for any of the above enumerated offenses shall cause to be transmitted to the court and to the Board of Commissioners a certified copy of the judgment of conviction.

SOURCES: Laws, 1974, ch. 566, § 19; reenacted, Laws, 1983, ch. 302, § 44; Laws, 1991, ch. 526, § 47; reenacted, Laws, 1992, ch. 515, § 47, eff from and after July 1, 1992.

Cross References — Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Suspensions and disbarments based on other proceedings, see Rules of Discipline for the Mississippi State Bar, Rule 6.

Federal Aspects — Internal Revenue Code, see 26 USCS §§ 1 et seq.

JUDICIAL DECISIONS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 73-3-157.

1. In general.

Rule 6, Miss. R. Disc., providing for disbarment of an attorney upon the conviction of any felony, controlled over § 73-3-339, which lists a violation of the United States Internal Revenue Code as an exception to the felony disbarment rule. Mississippi Bar v. McGuire, 647 So. 2d 706 (Miss. 1994).

An attorney who was suspended from the practice of law following a felony conviction in the federal courts and who was disbarred 3 years later at the conclusion of his appeal of the federal conviction, was not denied equal protection or due process rights on the ground that he would be required to wait 3 years longer before reinstatement than an attorney who chose not to appeal a conviction. All disbarred attorneys are treated equally; the disparity of time arises when an attorney resists the disbarment pending his or her appellate procedures. Had the attorney accepted the disbarment following his conviction, no delay in entering a final order of disbarment would have resulted, and therefore there was no unequal treatment or denial of due process. Additionally, the attorney's disbarment was not retroactive to the date of his suspension since the attorney's initiative delayed the entry of the final order; retroactivity cannot be applied when the attorney seeks a stay of the final order. Mississippi State Bar v. Nixon, 562 So. 2d 1288 (Miss. 1990), reinstatement granted, 618 So. 2d 1283 (Miss. 1993).

United States District Court judge's license to practice law in Mississippi was suspended where the judge had been convicted of perjury in violation of § 1623, Title 18, United States Code, a felony. Mississippi State Bar v. Nixon, 494 So. 2d 1388 (Miss. 1986).

Conviction of attorney in contempt proceeding before judge is not ground for automatic suspension of attorney, even though contempt may have arisen from attorney's misrepresentation to court; however, state bar may proceed with disciplinary action against attorney in regular course. Mississippi State Bar v. Attorney A., 475 So. 2d 1164 (Miss. 1985).

A petition for reinstatement to the Bar that was brought less than three years from the date of disbarment was premature, under § 73-3-339, since § 73-3-337, which controlled on the date of petitioner's disbarment, was no different in its effect from the current rule providing that an attorney may petition for reinstatement at any time after the expiration of three years from the date of final judgment of disbarment, rather than the date of the initial order suspending petitioner from the practice of law. McIntosh v. Mississippi State Bar, 449 So. 2d 1203 (Miss. 1984).

In disciplinary proceedings against an attorney who was convicted of a felony in federal court, the chancery court had no jurisdiction to restrain the State Bar from filing in the Supreme Court a certified copy of the attorney's conviction, and the Supreme Court's order invalidating the temporary injunction was valid in every respect, despite the attorney's contentions that it was without adequate process and notice to him, and that this section is unconstitutional; the injunction against the State Bar amounted to a usurpation of the powers and duties vested exclusively in the Supreme Court, and the order striking the injunction did not cut off the attorney's right to raise any defense, contention, or constitutional issue in the pending disciplinary action. Bramlett v. Burgin, 382 So. 2d 284 (Miss. 1979).

2.-5. [Reserved for future use.]

6. Under former § 73-3-157.

Where the disbarment of an attorney consists merely in a sentence imposed upon him in criminal proceedings, the circuit and chancery courts are not deprived of jurisdiction to entertain and act upon disbarment proceedings against him, and they may, notwithstanding the judgment and sentence in the criminal case, exercise their inherent power in this area so as to place the results beyond the reach of executive clemency. In re Vance, 275 So. 2d 90 (Miss. 1973).

RESEARCH REFERENCES

ALR. Violation of securities regulations as ground of disciplinary action against attorney. 18 A.L.R.3d 1408.

Homicide or assault as ground for disciplinary measures against attorney. 21 A.L.R.3d 887.

Effect of acquittal or dismissal in criminal prosecution as barring disciplinary action against attorney. 76 A.L.R.3d 1028.

Disciplinary action against attorney prior to exhaustion of appellate review of conviction. 76 A.L.R.3d 1061.

Attorney's conviction in foreign or federal jurisdiction as ground for disciplinary action. 98 A.L.R.3d 357.

Narcotics conviction as crime of moral turpitude justifying disbarment or other disciplinary action against attorney. 99 A.L.R.3d 288.

Am Jur. 44 Am. Jur. Proof of Facts 2d 377, Legal Malpractice in Domestic Relations.

§ 73-3-341. Disbarment or suspension in another jurisdiction.

Whenever any attorney subject to the disciplinary jurisdiction of the court shall be disbarred or suspended from the practice of law in another jurisdiction, such disbarment or suspension shall be grounds for disciplinary action in this state, and certification of such disbarment or suspension by the appropriate authority of such jurisdiction to the Executive Director of the Mississippi Bar shall be conclusive evidence of his guilt of the offense or unprofessional conduct on which said disbarment or suspension was ordered, and it shall not be necessary to prove the grounds of such offense in the disciplinary proceeding in this state. The sole issue to be determined in the disciplinary proceeding in this state shall be the extent of the final discipline to be imposed on said attorney, which may be less or more severe than the discipline imposed by the other jurisdiction.

SOURCES: Laws, 1974, ch. 566, § 20; reenacted, Laws, 1983, ch. 302, § 45; Laws, 1991, ch. 526, § 48; reenacted, Laws, 1992, ch. 515, § 48, eff from and after July 1, 1992.

Cross References — Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Discipline in another jurisdiction, see Rules of Discipline for the Mississippi State Bar, Rule 13.

JUDICIAL DECISIONS

1. In general.

Attorney's license to practice law in state was suspended for one year based on finding of United States Court of Appeals for Fifth Circuit that attorney was guilty of conduct unbecoming member of bar and suspending him from practice there for period of one year, and on Mississippi Supreme Court's independent survey of facts, where attorney had been convicted of mail fraud, fraud by wire, and aiding and abetting. Mississippi State Bar v. Young, 509 So. 2d 210 (Miss. 1987), petition dismissed, 523 So. 2d 323 (Miss. 1988).

RESEARCH REFERENCES

ALR. Disbarment or suspension of attorney in one state as affecting right to continue practice in another state. 81 A.L.R.3d 1281.

Am Jur. 31 Am. Jur. Trials 633, Defending Lawyers in Disciplinary Proceedings.

44 Am. Jur. Proof of Facts 2d 377, Legal Malpractice in Domestic Relations.

Practice References. L. Ray Patterson, Lawyer's Law: Procedural, Malpractice & Disciplinary Issues (Matthew Bender).

§ 73-3-343. Confidentiality of matters under investigation and proceedings; penalties.

All disciplinary agencies of the court, all court reporters, clerks, witnesses and parties are strictly enjoined to keep and maintain confidential all things concerning the matters under investigation and the proceedings thereon; provided, however, all proceedings before any complaint tribunal and in the court may be public if requested by the accused attorney. The complaint tribunal may, however, file with the supreme court an opinion or summary of the findings of fact and conclusions of law without disclosing the identity or residence of the accused, the complaining party or parties, witnesses, or any person, firm or corporation involved. Violation of this section or any part hereof shall be a misdemeanor punishable by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the county jail for not more than thirty (30) days or by both.

SOURCES: Laws, 1974, ch. 566, § 21; reenacted, Laws, 1983, ch. 302, § 46; reenacted, Laws, 1991, ch. 526, § 49; reenacted, Laws, 1992, ch. 515, § 49, eff from and after July 1, 1992.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Confidentiality of disciplinary matters, see Rules of Discipline for the Mississippi State Bar, Rule 15.

JUDICIAL DECISIONS

1. In general.

Private reprimand may be issued to attorney for insurance company on basis of attorney's civil trespass consisting of entry into burned remains of building, through unlocked door, without notice to or permission from insured lessee of building, and without identifying himself to insured lessee as insurer's representative, provided that wording of reprimand must adequately describe nature of offense and inform members of bench of nature of attorney's unprofessional conduct and must also reiterate confidentiality of private reprimand under § 73-3-343 and penalties for violation of confidence. An Att'y v. Mississippi State Bar Ass'n, 481 So. 2d 297 (Miss. 1985).

Under the common law as well as statute, any person filing a complaint in accordance with the disciplinary statutes and rules is accorded absolute privilege and no lawsuit predicated thereon may be instituted so long as the statements are made within the course and framework of the disciplinary process and are reasonably relevant to the complaint. And, unless it appears from the face of the pleading that the communication complained of exceeds the purpose of stating a complaint in the proper forum, it is absolutely privileged, and there can be no trial of the underlying motives of the defendant in instituting the complaint. This immunity shall extend to any cause of action, whatever the name, be it libel and slander, invasion of privacy, abuse of process or other. The immunity from suit accorded such privilege does not extend to one who thereafter maliciously publishes and causes said complaint or information contained therein to be circulated about the state to persons not authorized by the statute and regulations to receive same. Although immunity from being sued is accorded anyone, attorney or layman, who files a complaint with the State Bar, attorneys may nevertheless be disciplined by the Complaints Committee for maliciously filing groundless complaints without having at least an arguable justification for doing so. Netterville v. Lear Siegler, Inc., 397 So. 2d 1109 (Miss. 1981).

RESEARCH REFERENCES

ALR. Restricting access to records of disciplinary proceedings against attorneys. 83 A.L.R.3d 749.

Discovery or inspection of state bar records of complaints against or investigations of attorneys. 83 A.L.R.3d 777.

§ 73-3-345. Immunity from civil suit predicated on disciplinary proceedings.

All complaints filed pursuant hereto shall be absolutely privileged, and no lawsuit predicated thereon may be instituted, and each person, firm, association or legal entity filing such a complaint shall be immune from any civil suit predicated thereon. The board of commissioners, the committee on complaints, the executive director, the complaint counsel, the complaint tribunals, and their assistants, staff and employees shall be immune from civil suit for any conduct arising out of the performance of their official duties. Every person shall be immune from civil suit for all of his sworn or written statements made or given in the course of any investigation, investigatory hearing, formal hearing or review proceedings held and conducted under these disciplinary rules.

SOURCES: Laws, 1974, ch. 566, § 22; reenacted, Laws, 1983, ch. 302, § 47; reenacted, Laws, 1991, ch. 526, § 50; reenacted, Laws, 1992, ch. 515, § 50, eff from and after July 1, 1992.

Cross References — Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Immunity from civil suit—right to sue, see Rules of Discipline for the Mississippi State Bar, Rule 14.

JUDICIAL DECISIONS

1. In general.

Statutory grant of absolute immunity from suit for one who files bar complaint against attorney did not bar attorney's counterclaim for malicious prosecution against complainant in civil suit that was filed by complainant against attorney after complainant's bar complaint was dismissed. Roussel v. Robbins, 688 So. 2d 714 (Miss. 1996), reh'g denied, 691 So. 2d 1027 (Miss. 1997).

An attorney who has been exonerated of disciplinary charges is nonetheless not entitled to the award of attorney's fees, travel and other out-of-pocket expenses incurred in his or her defense. Netterville v. Mississippi State Bar, 404 So. 2d 1026 (Miss. 1981).

Under the common law as well as statute, any person filing a complaint in accordance with the disciplinary statutes and rules is accorded absolute privilege and no lawsuit predicated thereon may be instituted so long as the statements are made within the course and framework of the disciplinary process and are reasonably relevant to the complaint. And, unless it appears from the face of the pleading that the communication complained of exceeds the purpose of stating a complaint in the proper forum, it is absolutely privileged, and there can be no trial of the underlying motives of the defendant in instituting the complaint. This immunity shall extend to any cause of action, whatever the name, be it libel and slander, invasion of privacy, abuse of process or other. The immunity from suit accorded such privilege does not extend to one who thereafter maliciously publishes and causes said complaint or information contained therein to be circulated about the state to persons not authorized by the statute and regulations to receive same. Although immunity from being sued is accorded anyone, attorney or layman, who files a complaint with the State Bar, attorneys may nevertheless be disciplined by the Complaints Committee for maliciously filing groundless complaints without having at least an arguable justification for doing so. Netterville v. Lear Siegler, Inc., 397 So. 2d 1109 (Miss. 1981).

RESEARCH REFERENCES

ALR. Malicious prosecution or similar tort action predicated upon disciplinary proceedings against attorney. 52 A.L.R.2d 1217.

Libel and slander: privilege in connection with proceedings to disbar or discipline attorney. 77 A.L.R.2d 493.

Testimony before of communications to private professional society's judicial commission, ethics committee, or the like, as privileged. 9 A.L.R.4th 807.

§ 73-3-347. Personal incapacity; meaning of term "personally incapable" to practice law.

For the purposes of Sections 73-3-347 through 73-3-365, the term "personally incapable‘ to practice law shall include: (a) suffering from mental or physical illness of such character as to render the person afflicted incapable of managing himself, his affairs or the affairs of others with the integrity and competence requisite for the proper practice of law; or (b) habitual use of alcoholic beverages or liquids of any alcoholic content, hallucinogens, sedatives, drugs, narcotics or other mentally or physically disabling substances of any character whatsoever to any extent which impairs or tends to impair the ability to conduct efficiently and properly the affairs undertaken for a client in the practice of law.

SOURCES: Laws, 1974, ch. 566, § 23(1); reenacted, Laws, 1983, ch. 302, § 48; reenacted, Laws, 1991, ch. 526, § 51; reenacted, Laws, 1992, ch. 515, § 51, eff from and after July 1, 1992.

Cross References — Procedure for instituting and conducting proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-351.

Right of attorney to representation by counsel in proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-353.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Personal incapacity generally, see Rules of Discipline for the Mississippi State Bar, Part Two, Rules 17 through 25.

RESEARCH REFERENCES

ALR. Validity and application of regulation requiring suspension or disbarment of attorney because of mental or emotional illness. 50 A.L.R.3d 1259.

Conduct of attorney in capacity of executor or administrator of decedent's estate as ground for disciplinary action. 92 A.L.R.3d 655.

Attorney's delay in handling decedent's estate as ground for disciplinary action. 21 A.L.R.4th 75.

Mental or emotional disturbance as defense to or mitigation of charges against attorney in disciplinary proceeding. 26 A.L.R.4th 995.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in matters involving formation or dissolution of business organization as ground for disciplinary action — modern cases. 63 A.L.R.4th 656.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in matters involving real-estate transactions as ground for disciplinary action — modern cases. 65 A.L.R.4th 24.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in tax matters as ground for disciplinary action — modern cases. 66 A.L.R.4th 314.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in estate or probate matters as ground for disciplinary action — modern cases. 66 A.L.R.4th 342.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in family law matters as ground for disciplinary action — modern cases. 67 A.L.R.4th 415.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in personal injury or property damage actions as ground for disciplinary action — modern cases. 68 A.L.R.4th 694.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in criminal matters as ground for disciplinary action — modern cases. 69 A.L.R.4th 410.

Negligence, inattention, or professional incompetence of attorney in handling client's affairs in bankruptcy matters as ground for disciplinary action — modern cases. 70 A.L.R.4th 786.

Misconduct involving intoxication as ground for disciplinary action against attorney. 1 A.L.R.5th 874.

Am Jur. 7 Am. Jur. 2d, Attorneys at Law §§ 98, 180, 267.

Practice References. L. Ray Patterson, Lawyer's Law: Procedural, Malpractice & Disciplinary Issues (Matthew Bender).

§ 73-3-349. Personal incapacity; suspension.

Whenever it has been determined that any attorney subject to the disciplinary jurisdiction of the court is personally incapable to practice law, he shall be suspended from the practice of law until reinstated by order of the court.

SOURCES: Laws, 1974, ch. 566, § 23(2); reenacted, Laws, 1983, ch. 302, § 49; reenacted, Laws, 1991, ch. 526, § 52; Laws, reenacted, 1992, ch. 515, § 52, eff from and after July 1, 1992.

Cross References — Meaning of term "personally incapable" to practice law, see § 73-3-347.

Procedure for instituting and conducting proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-351.

Right of attorney to representation by counsel in proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-353.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Personal incapacity generally, see Rules of Discipline for the Mississippi State Bar, Part Two, Rules 17 through 25.

RESEARCH REFERENCES

ALR. Mental or emotional disturbance as defense to or mitigation of charges against attorney in disciplinary proceeding. 26 A.L.R.4th 995.

Validity and construction of procedures to temporarily suspend attorney from practice, or place attorney on inactive status, pending investigation of, and action upon, disciplinary charges. 80 A.L.R.4th 136.

§ 73-3-351. Personal incapacity; proceedings; circumstances showing existence of condition.

Proceedings to determine whether an attorney is personally incapable to practice law shall be instituted and conducted in the same manner and upon the same procedure as disciplinary proceedings, except as otherwise set out in Sections 73-3-347 through 73-3-365. In addition to, and without exclusion of, any other circumstances, cause to believe that an attorney may be personally incapable to practice law shall exist whenever information is received that such member (a) has interposed successfully a defense of mental incompetence to secure abatement of, or to defeat an adverse determination in, a disciplinary proceeding brought against him in any tribunal in any jurisdiction, (b) has defended, upon like grounds, a suit brought against him in any tribunal in any jurisdiction, (c) has been judicially declared incompetent, or (d) has been legally committed to an institution for the treatment of mental illness.

SOURCES: Laws, 1974, ch. 566, § 23(3); reenacted, Laws, 1983, ch. 302, § 50; reenacted, Laws, 1991, ch. 526, § 53; reenacted, Laws, 1992, ch. 515, § 53, eff from and after July 1, 1992.

Cross References — Meaning of term "personally incapable" to practice law, see § 73-3-347.

Right of attorney to representation by counsel in proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-353.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Personal incapacity generally, see Rules of Discipline for the Mississippi State Bar, Part Two, Rules 17 through 25.

§ 73-3-353. Personal incapacity; representation by counsel; guardian.

In proceedings under Sections 73-3-347 through 73-3-365, the attorney shall be entitled to representation by counsel. An attorney who has been declared mentally incompetent, judicially, or who has been committed, judicially, to an institution for the treatment of the mentally ill shall be defended by his legally appointed guardian or guardian ad litem, if any; if a guardian or guardian ad litem has not been appointed, the chief justice, on certification by the board of commissioners, shall appoint a guardian ad litem. The same procedure shall apply to an attorney who has asserted his incompetence, or whose incompetence to defend becomes apparent during the proceedings. In all cases, counsel previously selected by the attorney will be appointed guardian ad litem, absent clear and compelling reasons to the contrary.

SOURCES: Laws, 1974, ch. 566, § 23(4); reenacted, Laws, 1983, ch. 302, § 51; reenacted, Laws, 1991, ch. 526, § 54; reenacted, Laws, 1992, ch. 515, § 54, eff from and after July 1, 1992.

Cross References — Meaning of term "personally incapable" to practice law, see § 73-3-347.

Procedure for instituting and conducting proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-351.

Service on attorney who has been committed or declared incompetent, see § 73-3-355.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Personal incapacity generally, see Rules of Discipline for the Mississippi State Bar, Part Two, Rules 17 through 25.

RESEARCH REFERENCES

ALR. Appointment of counsel for attorney facing disciplinary charges. 86 A.L.R.4th 1071.

§ 73-3-355. Personal incapacity; service on attorney who has been committed or declared incompetent.

Service of process or notice to an attorney who has been committed or declared incompetent shall be accomplished in the same manner as that for process of incompetents in proceedings in the chancery courts of Mississippi. After the appointment of a guardian ad litem, notices shall be served upon said guardian ad litem.

SOURCES: Laws, 1974, ch. 566, § 23(5); reenacted, Laws, 1983, ch. 302, § 52; reenacted, Laws, 1991, ch. 526, § 55; reenacted, Laws, 1992, ch. 515, § 55, eff from and after July 1, 1992.

Cross References — Meaning of term "personally incapable" to practice law, see § 73-3-347.

Procedure for instituting and conducting proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-351.

Right of attorney to representation by counsel in proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-353.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Personal incapacity generally, see Rules of Discipline for the Mississippi State Bar, Part Two, Rules 17 through 25.

§ 73-3-357. Personal incapacity; sufficiency, as evidence, of court order of incompetence or commitment.

A certified copy of the court order declaring an attorney mentally incompetent, or an order of commitment if he has been committed to an institution for the mentally incompetent, shall constitute sufficient evidence that said attorney is personally incapable to practice law, if such is not successfully rebutted.

SOURCES: Laws, 1974, ch. 566, § 23(6); reenacted, Laws, 1983, ch. 302, § 53; reenacted, Laws, 1991, ch. 526, § 56; reenacted, Laws, 1992, ch. 515, § 56, eff from and after July 1, 1992.

Cross References — Meaning of term "personally incapable" to practice law, see § 73-3-347.

Procedure for instituting and conducting proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-351.

Right of attorney to representation by counsel in proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-353.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Personal incapacity generally, see Rules of Discipline for the Mississippi State Bar, Part Two, Rules 17 through 25.

§ 73-3-359. Personal incapacity; mental examination and reports.

In any proceeding where mental incompetency is an issue, the attorney may be required to submit to a mental examination by one or more practicing psychiatrists selected by the board of commissioners or by the complaint tribunal after its designation. Reports of physicians regarding the mental condition of an attorney may be received as probative evidence, if the physicians are available for cross-examination.

SOURCES: Laws, 1974, ch 566, § 23(7); reenacted, Laws, 1983, ch. 302, § 54; reenacted, Laws, 1991, ch. 526, § 57; reenacted, Laws, 1992, ch. 515, § 57, eff from and after July 1, 1992.

Cross References — Meaning of term "personally incapable" to practice law, see § 73-3-347.

Procedure for instituting and conducting proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-351.

Right of attorney to representation by counsel in proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-353.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Personal incapacity generally, see Rules of Discipline for the Mississippi State Bar, Part Two, Rules 17 through 25.

RESEARCH REFERENCES

ALR. Validity and construction of rule or order requiring attorney to submit to physical or mental examination to determine capacity to continue in practice of law. 52 A.L.R.3d 1326.

§ 73-3-361. Personal incapacity; judgment of suspension by complaint tribunal.

If, after a full hearing, the complaint tribunal finds the attorney personally incapable to practice law, the complaint tribunal shall enter a judgment formally suspending said attorney from the practice of law until the further order of the court.

SOURCES: Laws, 1974, ch. 566, § 23(8); reenacted, Laws, 1983, ch. 302, § 55; reenacted, Laws, 1991, ch. 526, § 58; reenacted, Laws, 1992, ch. 515, § 58, eff from and after July 1, 1992.

Cross References — Meaning of term "personally incapable" to practice law, see § 73-3-347.

Procedure for instituting and conducting proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-351.

Right of attorney to representation by counsel in proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-353.

Appeal from judgment of suspension, see § 73-3-363.

Reinstatement procedures after suspension because of personal incapacity, see § 73-3-365.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Personal incapacity generally, see Rules of Discipline for the Mississippi State Bar, Part Two, Rules 17 through 25.

§ 73-3-363. Personal incapacity; appeal procedures.

Procedures for the filing of the record and appeal from the judgment of the complaint tribunal shall be the same as the appeal procedures from a judgment of suspension or disbarment upon disciplinary grounds.

SOURCES: Laws, 174, ch. 566, § 23(9); reenacted, Laws, 1983, ch. 302, § 56; reenacted, Laws, 1991, ch. 526, § 59; reenacted, Laws, 1992, ch. 515, § 59, eff from and after July 1, 1992.

Cross References — Meaning of term "personally incapable' to practice law, see § 73-3-347.

Procedure for instituting and conducting proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-351.

Right of attorney to representation by counsel in proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-353.

Judgment of suspension by complaint tribunal, see § 73-3-361.

Reinstatement procedures after suspension because of personal incapacity, see § 73-3-365.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Personal incapacity generally, see Rules of Discipline for the Mississippi State Bar, Part Two, Rules 17 through 25.

§ 73-3-365. Personal incapacity; reinstatement procedures.

Procedures for reinstatement of an attorney suspended because of personal incapacity to practice law shall be, insofar as is applicable, the same as the procedure for reinstatement of an attorney following suspension upon disciplinary grounds. The petition for reinstatement shall be filed with the clerk of the court, and a copy of said petition shall be served upon the Mississippi Bar, and it shall be under a duty to investigate the matter, respond to the petition and appear at the hearing. The petitioner shall be required to supply such supporting proof of personal capacity as may be necessary and, in addition, the attorney may be required to submit to examinations by physicians or psychiatrists selected by the court. If the court is satisfied that the attorney has regained his capacity to practice law, the court may reinstate the petitioner to the practice of law and enter judgment accordingly; provided, however, no judgment of reinstatement shall be entered by default or on an ex parte basis, and in all cases the court shall hear the Mississippi Bar. A filing fee of One Hundred Fifty Dollars ($150.00) to defray the expense of investigating the matter shall be paid the Mississippi Bar upon the filing of each petition for reinstatement, and any petition for reinstatement subsequent to the initial petition shall not be filed within six (6) months from the date of an adverse determination of any prior petition.

SOURCES: Laws, 1974, ch. 566, § 23(10); reenacted, Laws, 1983, ch. 302, § 57; Laws, 1991, ch. 526, § 60; reenacted, Laws, 1992, ch. 515, § 60, eff from and after July 1, 1992.

Cross References — Meaning of term "personally incapable' to practice law, see § 73-3-347.

Procedure for instituting and conducting proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-351.

Right of attorney to representation by counsel in proceedings under Sections 73-3-347 through 73-3-365, see § 73-3-353.

Judgment of suspension by complaint tribunal, see § 73-3-361.

Appeal from judgment of suspension, see § 73-3-363.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Personal incapacity generally, see Rules of Discipline for the Mississippi State Bar, Part Two, Rules 17 through 25.

RESEARCH REFERENCES

ALR. Reinstatement of attorney after disbarment, suspension, or resignation. 70 A.L.R.2d 268.

Pardon as restoring public office or license or eligibility therefor. 58 A.L.R.3d 1191.

§ 73-3-367. Disciplinary agencies; authority to incur expenses.

All disciplinary agencies of the court are hereby authorized to incur reasonable and necessary expenses in connection with the investigation and disposition of charges and complaints.

SOURCES: Laws, 1974, ch. 566, § 24; reenacted, Laws, 1983, ch. 302, § 58; reenacted, Laws, 1991, ch. 526, § 61; reenacted, Laws, 1992, ch. 515, § 61, eff from and after July 1, 1992.

Cross References — Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Costs and expenses, see Rules of Discipline for the Mississippi State Bar, Rule 27.

§ 73-3-369. Jurisdiction over nonresident attorneys; notice; service.

The acceptance by a nonresident attorney of the rights and privileges of the practice of law within this state, as evidenced by his practice of law in this state, shall be deemed equivalent to an appointment by such nonresident attorney of the Executive Director of the Mississippi Bar to be his true and lawful attorney, upon whom may be served all process summons or notice of any and all proceedings against him instituted pursuant to and conducted under these rules of disciplinary procedure; and the acceptance of such rights and privileges and the practice of law by any such nonresident attorney in this state shall be a signification of his agreement that any such process, summons or notice against him which is so served shall be of the same legal force and validity as if served on him personally.

Notice of the service of such process, summons or notice, together with a copy of any complaint or charge, shall be mailed forthwith by the executive director by United States certified mail or registered mail, return receipt requested, restricted for delivery to addressee only, and with postage prepaid, to such nonresident attorney at his last known address.

When such process, summons or notice is served as herein provided it shall be deemed sufficient to give the court, and its disciplinary agencies provided for herein jurisdiction over said nonresident attorney for the purpose of investigating and finally determining any complaint or charge touching upon the professional conduct or conduct evincing unfitness for the practice of law or the personal incapacity to practice law of any such nonresident attorney.

SOURCES: Laws, 1974, ch. 566, § 25; reenacted, Laws, 1983, ch. 302, § 59; Laws, 1991, ch. 526, § 62; reenacted, Laws, 1992, ch. 515, § 62, eff from and after July 1, 1992.

Cross References — Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Jurisdiction of non-resident attorneys, see Rules of Discipline for the Mississippi State Bar, Rule 16.

§ 73-3-371. Plea of nolo contendere; consent order of suspension or disbarment.

At any stage of the disciplinary proceedings, the board of commissioners may, in the exercise of its sole discretion, accept a plea of nolo contendere from the accused attorney and agree to the entry by the court of a consent order of suspension or disbarment of the accused attorney.

Notwithstanding the provisions of Section 73-3-315(e) to the contrary, upon the acceptance of a plea of nolo contendere the investigation or disciplinary procedure shall terminate, and the board of commissioners will present to the court an agreed order to be entered by the court either suspending or disbarring said attorney by consent, as the particular circumstances of the matter may require in the discretion of the board of commissioners. Said order shall be a public record, and certified copies thereof shall be mailed to the judges of the circuit and chancery court districts within which the attorney resides.

For the purpose of determining the discipline to be imposed on the accused attorney, the board of commissioners shall consider a plea of nolo contendere as tantamount to proof of guilt of the offense or unprofessional conduct or personal disability to practice law on which said disciplinary proceeding was grounded.

SOURCES: Laws, 1974, ch. 566, § 26; reenacted, Laws, 1983, ch. 302, § 60; reenacted, Laws, 1991, ch. 526, § 63; reenacted, Laws, 1992, ch. 515, § 63, eff from and after July 1, 1992.

Cross References — Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Pleas of nolo contendere, admissions and irrevocable resignations, see Rules of Discipline for the Mississippi State Bar, Rule 10.

§ 73-3-373. Recognition of inherent power of judicial branch of government.

This article shall not be construed to modify or restrict the inherent right of the courts of record of the State of Mississippi to supervise the bar as an incident to their power to admit attorneys to practice and to the fulfillment of their responsibility for the proper administration of justice, it being here declared that it is an inherent power of the judicial branch of government ultimately to determine the qualifications of those to be admitted to practice in its court, for assisting in its work, and to protect itself and the citizenry of this state in this respect from the unfit, those lacking in sufficient learning and those not possessing good moral character. Any disciplinary proceeding in which the Mississippi Bar is a complaining party shall be conducted in accordance with the remaining sections of this article.

SOURCES: Laws, 1974, ch. 566, § 27; reenacted, Laws, 1983, ch. 302, § 61; Laws, 1991, ch. 526, § 64; reenacted, Laws, 1992, ch. 515, § 64, eff from and after July 1, 1992.

Cross References — Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

Jurisdiction, see Rules of Discipline for the Mississippi State Bar, Rule 1.

JUDICIAL DECISIONS

1. In general.

Under this section, it is acknowledged that the state courts have the inherent power to supervise the bar as an incident to their power to admit attorneys to practice and recognized that the judicial branch of government has the inherent power to determine the qualifications of those to be admitted to the practice of law in the state. In re Mississippi State Bar, 361 So. 2d 503 (Miss. 1978).

RESEARCH REFERENCES

ALR. Power of court to order restitution to wronged client in disciplinary proceeding against attorney. 75 A.L.R.3d 307.

Advertising as ground for disciplining attorney. 30 A.L.R.4th 742.

Bringing of frivolous civil claim or action as ground for discipline of attorney. 85 A.L.R.4th 544.

Soliciting client to commit illegal or immoral act as ground for discipline of attorney. 85 A.L.R.4th 567.

ARTICLE 9.

REPEAL PROVISIONS FOR BOARD OF BAR ADMISSIONS.

SEC.	
73-3-401.	Repealed
73-3-403.	Repealed.

§ 73-3-401. Repealed.

Repealed by Laws of 2006, ch. 471, § 16 effective from and after July 1, 2006.

[Laws, 1979, ch. 301, §§ 32, 33; ch. 357, § 6; Laws, 1983, ch 302, § 62; ch. 457, § 17; Laws, 1991, ch. 560, § 16; Laws, 1999, ch. 372, § 1; Laws, 2000, ch. 548, § 1; Laws, 2003, ch. 524, § 16, eff from and after July 1, 2003.]

Editor's Note — Former § 73-3-401 provided for the repeal of §§ 73-3-2 through 73-3-59.

§ 73-3-403. Repealed.

Repealed by Laws, 2014, ch. 311, § 1, eff from and after July 1, 2014.

§ 73-3-403. [Laws, 1991, ch. 526, § 65; Laws, 1992, ch. 515, § 65; Laws, 1995, ch. 556, § 1; Laws, 2000, ch. 568, § 1; Laws, 2002, ch. 599, § 1; Laws, 2007, ch. 340, § 1, eff from and after July 1, 2007.]

Editor's Note — Former § 73-3-403 provided for the repeal of the Mississippi Bar and procedures related to the regulation of fees and disciplinary jurisdiction of attorneys, codified as Sections 73-3-101 through 73-3-145, 73-3-171, and 73-3-301 through 73-3-373.

CHAPTER 4

Auctioneers

Sec.

73-4-1. Short title.
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73-4-29. Filing of bonds by applicants for licenses; requirements for auctions of factory-built homes.
73-4-31. Form, terms and conditions, and duration of bonds provided under chapter; liability on bonds; cancellation of bonds.
73-4-33. Procedure for recovery on bonds; exclusivity of remedy.
73-4-35. Standards governing performance of duties of auctioneers; accounting and payment of monies to owners or consignors of goods involved in auction.
73-4-37. Recordkeeping requirements.
73-4-39. Requirement of written contract for sale of goods; time period for retention of contract.
73-4-41. Advertisement of auctions.
73-4-43. Requirement of license; penalties for unlicensed conduct.
73-4-45. Penalties for violations of chapter.
73-4-47. Proceedings for injunctions.
73-4-49. Charging of violations of chapter.
73-4-51. Appropriations.
73-4-53. Repealed.

§ 73-4-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Auctioneers License Act."

SOURCES: Laws, 1995, ch. 405 § 1; reenacted without change, Laws, 2010, ch. 335, § 1; reenacted without change, Laws, 2013, ch. 415, § 1; reenacted without change, Laws, 2016, ch. 348, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.

§ 73-4-3. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed herein, unless the context otherwise requires:

(a) "Auction" means a sale transaction conducted by means of oral or written exchanges between an auctioneer and the members of his audience, which exchanges consist of a series of invitations for offers for the purchase of goods made by the auctioneer and offers to purchase made by members of his audience and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience.

(b) "Auction firm" means any business establishment or other location owned by any entity where goods are sold or advertised to be sold at auction or on any recurring basis.

(c) "Auctioneer" means an individual who is engaged in, or who by advertising or otherwise holds himself out as being available to engage in, the calling for, the recognition of, and the acceptance of, offers for the purchase of goods or real estate at an auction.

(d) "Commission" means the Mississippi Auctioneer Commission.

(e) "Goods" means any tangible personal property that can be lawfully offered for sale, real estate, property sold pursuant to any will or settlement of any estate, property sold pursuant to any legal foreclosure, automobiles or farm or other heavy equipment.

(f) "Licensee" means any person licensed under this chapter, and, in the case of an auction firm, includes the person required to obtain a license for such auction firm.

(g) "Organization" means a corporation, partnership, trust (specifically a business trust), firm, association, or any other form of business enterprise which is owned by two (2) or more individuals.

(h) "Person" means an organization or an individual.

SOURCES: Laws, 1995, ch. 405 § 2; Laws, 2009, ch. 476, § 1; reenacted without change, Laws, 2010, ch. 335, § 2; reenacted without change, Laws, 2013, ch. 415, § 2; reenacted without change, Laws, 2016, ch. 348, § 2, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.

§ 73-4-5. License required to conduct auction, provide auction services, hold self out as or advertise services as auctioneer; exceptions.

(1) It is unlawful for any person, corporation, limited liability company, partnership or other entity to conduct an auction, provide an auction service, hold himself out as an auctioneer, or advertise his services as an auctioneer in the State of Mississippi without a license issued by the commission under this chapter.

(2) The provisions of this chapter shall not apply to the following transactions:

(a) A sale conducted by order of any United States court pursuant to Title 11 of the United States Code relating to bankruptcy;

(b) A sale conducted by an employee of the United States or the State of Mississippi or its political subdivisions in the course and scope of his employment;

(c) A sale conducted by a charitable or nonprofit organization if the auctioneer receives no compensation;

(d) A sale conducted by an individual of his own property if such individual is not engaged in the business of selling such property as an auctioneer on a recurring basis;

(e) A sale conducted by an individual acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any such person acting under order of court; by a real estate agent, broker or salesman, who auctions property that he has an exclusive listing agreement on, if done through a silent or written auction not done by public outcry or by a trustee acting under a trust agreement, deed of trust or will;

(f) A foreclosure sale of personal property conducted personally by the mortgagee or other secured party or an employee or agent of such mortgagee or other secured party acting in the course and scope of his employment if the employee or agent is not engaged otherwise in the auction business and if all property for sale in the auction is subject to a security agreement;

(g) A sale conducted by sealed bid;

(h) An auction conducted in a course of study, approved by the Secretary of State, for auctioneers and conducted only for student training purposes;

(i) An auction conducted by a posted stockyard or market agency as defined by the Federal Packers and Stockyard Act, 1921, as amended (7 USCS 181 et seq.);

(j) An auction of livestock conducted by a nonprofit livestock trade association chartered in this state if the auction involves only the sale of the trade association's members' livestock; or

(k) An auction conducted by a charitable or nonprofit organization chartered in this state if the auction involves only the property of the organization's members and the auction is part of a fair that is organized under state, county or municipal authority.

SOURCES: Laws, 1995, ch. 405 § 3; Laws, 2009, ch. 476, § 2; reenacted without change, Laws, 2010, ch. 335, § 3; reenacted without change, Laws, 2013, ch. 415, § 3; reenacted without change Laws, 2016, ch. 348, § 3, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.

Federal Aspects — Federal Packers and Stockyard Act of 1921, see 7 USCS §§ 181 et seq.

Title 11 of the United States Code, see 11 USCS §§ 1 et seq.

ATTORNEY GENERAL OPINIONS

Individuals appointed by the Chancery Court to sell real estate or personal property items pursuant to a court order are not required to obtain an auctioneer's license. Buffington, July 31, 1997, A.G. Op. #97-0434.

§ 73-4-7. Mississippi Auctioneer Commission; creation; powers and duties generally; qualifications, terms, and compensation of members.

(1) The Mississippi Auctioneer Commission is created, and it shall have the authority to make such rules and regulations as are reasonable and necessary for the orderly regulation of the auctioneering profession and the protection of the public, which rules and regulations are not inconsistent with the Mississippi Constitution of 1890 and state laws. The commission shall have the following powers:

(a) The power to set reasonable license fees, to collect and hold such fees and to disburse such fees in any manner not inconsistent with this chapter.

(b) The power to make such rules and regulations as will promote the orderly functioning of the auction profession and ensure the protection of the public.

(c) The power to hire and retain such staff and support personnel as are necessary to conduct business and assure compliance with this chapter.

(d) The power to conduct investigations, hold hearings, subpoena witnesses, make findings of fact and otherwise enforce the disciplinary provisions contained in this chapter.

(2) The Mississippi Auctioneer Commission shall consist of five (5) members, one (1) from each congressional district, who shall be appointed by the Governor. All appointees shall possess the following minimum qualifications:

(a) An appointee shall be a citizen of Mississippi.

(b) An appointee shall have been engaged as an auctioneer for a period of not less than five (5) years immediately preceding his appointment.

(c) An appointee shall be of good reputation, trustworthy and knowledgeable in the auction profession.

An individual may not act as a member of the commission while holding another elected or appointed office in either the state or federal government or while owning a school or other facility to train individuals to be auctioneers.

(3) In order to assure continuity, the Governor shall appoint the initial members of the commission for the following terms:

(a) The member appointed from the First Congressional District shall serve a term of one (1) year;

(b) The member appointed from the Second Congressional District shall serve a term of two (2) years;

(c) The member appointed from the Third Congressional District shall serve a term of three (3) years;

(d) The member appointed from the Fourth Congressional District shall serve a term of four (4) years; and

(e) The member appointed from the Fifth Congressional District shall serve a term of five (5) years.

Subsequent terms shall be for five (5) years, except for interim appointments to fill unexpired terms which shall be only for the unexpired term.

(4) Each member of the commission shall receive a per diem as provided by Section 25-3-69 per meeting and shall be reimbursed for ordinary and necessary expenses incurred in the performance of official duties as provided in Section 25-3-41.

SOURCES: Laws, 1995, ch. 405 § 4; reenacted without change, Laws, 2010, ch. 335, § 4; reenacted without change, Laws, 2013, ch. 415, § 4; reenacted without change, Laws, 2016, ch. 348, § 4, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.

ATTORNEY GENERAL OPINIONS

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

§ 73-4-9. Meetings of commission generally; quorum; requirement of majority vote.

The commission shall meet each January at a time and place established by the chairman to conduct an election of officers and such other business as may be appropriate. The commission shall also meet upon the call of the chairman or upon the request of any two (2) members of the commission. The secretary shall provide reasonable notice of the time and place of each meeting to all members.

Three (3) members shall constitute a quorum for the purpose of transacting business. A majority vote of the commission shall be necessary to bind the commission.

SOURCES: Laws, 1995, ch. 405 § 5; reenacted without change, Laws, 2010, ch. 335, § 5; reenacted without change, Laws, 2013, ch. 415, § 5; reenacted without change, Laws, 2016, ch. 348, § 5, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.

§ 73-4-11. Officers of commission; executive director.

(1) At the meeting to be held each January, the commission shall elect from its membership a chairman and a vice chairman. Each officer shall serve a term of one (1) year and shall not vacate office until a successor is elected.

(2) The chairman shall preside at all meetings of the commission.

(3) The vice chairman shall act as presiding officer in the absence of the chairman and shall perform such other duties as the chairman may direct.

(4) The commission shall appoint an executive director who shall not be a member of the commission.

(5) The executive director shall:

(a) Notify all members of meetings;

(b) Keep a record of all meetings of the commission, votes taken by the commission and other proceedings, transactions, communications, official acts and records of the commission; and

(c) Perform such other duties as the chairman directs.

SOURCES: Laws, 1995, ch. 405 § 6; reenacted without change, Laws, 2010, ch. 335, § 6; reenacted without change, Laws, 2013, ch. 415, § 6; reenacted without change, Laws, 2016, ch. 348, § 6, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.

§ 73-4-13. Powers and duties of commission.

The commission is empowered to:

(a) Administer and enforce the provisions of this chapter.

(b) Promulgate such rules and regulations and prescribe such forms as are necessary for the administration and the effective and efficient enforcement of this chapter.

(c) Issue, suspend and revoke licenses in accordance with this chapter.

(d) Provide for the filing and approval of surety bonds as required by this chapter.

(e) Investigate complaints concerning licensees or persons the commission has reason to believe should be licensees, specifically including complaints respecting failure to comply with this chapter or the rules and regulations promulgated as authorized by this chapter and to take appropriate action to address such complaints.

(f) Commence actions, in the name of the State of Mississippi, in an appropriate circuit court in order to force compliance with this chapter or rules and regulations promulgated hereunder by restraining order or injunction.

(g) Hold public hearings on any matters for which a hearing is required under this chapter and to have all powers granted by law for such hearings.

(h) Adopt a seal and, through its secretary, certify copies.

(i) Appoint an executive director and employ all necessary employees and consultants to administer and enforce this chapter.

SOURCES: Laws, 1995, ch. 405 § 7; reenacted without change, Laws, 2010, ch. 335, § 7; reenacted without change, Laws, 2013, ch. 415, § 7; reenacted without change, Laws, 2016, ch. 348, § 7, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.

§ 73-4-15. Mississippi Auctioneer Licensure Fund.

All fees and other monies collected or received by the commission under this chapter shall be deposited into a special fund which is hereby created in the State Treasury, to be known as the "Mississippi Auctioneer Licensure Fund." Unexpended amounts remaining in such special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in such special funds shall be deposited to the credit of the special fund. All monies in the special fund shall be expended or used exclusively for the purposes of carrying out the provisions of this chapter. All records of such fees received by the commission and deposited in the special fund shall be available for inspection by the State Auditor. Monies from the special fund shall be used to support the commission, upon appropriation by the Legislature.

SOURCES: Laws, 1995, ch. 405 § 8; Laws, 2009, ch. 476, § 3; reenacted without change, Laws, 2010, ch. 335, § 8; reenacted without change, Laws, 2013, ch. 415, § 8; reenacted without change, Laws, 2016, ch. 348, § 8, eff from and after July 1, 2016.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts,‘ "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Amendment Notes — The 2016 amendment reenacted the section without change.

§ 73-4-17. Classification of licenses; qualifications of applicants for licenses; examinations; examination fee; surety bond generally; additional requirements for auction firm license; issuance, term, and renewal of licenses; license fees; record keeping requirements.

There shall be two (2) classes of auctioneers' licenses, which shall be auctioneer and auction firm. All applicants for a license under this chapter shall possess the following minimum qualifications:

(a) Applicants shall have attained the age of eighteen (18) years by the issuance date of the license.

(b) Applicants shall have obtained at a minimum a high school diploma or G.E.D. equivalent and shall be graduates of an auctioneering school approved by the commission.

(c) Each applicant for a license under this chapter shall demonstrate to the commission that he is of good moral character and worthy of public trust through background information to be provided on his application form and two (2) letters of reference from persons not related to the applicant who have known the applicant at least three (3) years. The commission may require additional information or a personal interview with the applicant to determine if such applicant should be granted a license.

(d) Each applicant for a license under this chapter shall take and successfully complete an examination as prescribed by the commission. The examination shall include questions on ethics, reading comprehension, writing, spelling, elementary arithmetic, elementary principals of land economics, general knowledge of bulk sales law, contracts of sale, agency, leases, brokerage, knowledge of various goods commonly sold at auction, ability to call bids, knowledge of sale preparation and proper sale advertising and sale summary, and knowledge of the provisions of this chapter and the commission's rules and regulations. There shall be separate examinations for auctioneer and auction firm each based upon relevant subject matter appropriate to the license classification as set forth herein. Examinations shall be administered at least once a year and may be administered quarterly at the commission's discretion provided there are at least twenty-five (25) examinees. The commission shall ensure that the various forms of the test remain secure.

(e) In order to defray the cost of administration of the examinations, applicants for the examination shall pay fees as follows:

(i) Auctioneer...$100.00.
(ii) Auction firm...$100.00.

(f) Each applicant desiring to sit for the examination for any license required under this chapter shall be required to furnish to the commission at least thirty (30) days prior to the examination evidence of a surety bond in the following minimum amounts:

(i) Auctioneer..$10,000.00.
(ii) Auction firm......................................$10,000.00.

(g) In addition to the bond required herein, applicants for the auction firm license shall furnish the commission with all relevant information concerning the premises to be licensed, to include location, whether the premises are owned or leased, and an affidavit that the proposed use of the premises as an auction firm does not violate zoning or any other use restrictions. A separate license shall be required for each business location of the owner of multiple auction galleries.

(h) Except as provided in Section 33-1-39, all licenses granted pursuant to this chapter shall be for a term of two (2) years and shall expire on the first day of March at the end of such two-year term. The biennial license fees shall be set from time to time by the commission with a maximum fee of Two Hundred Dollars ($200.00). License fees shall not be prorated for any portion of a year but shall be paid for the entire biennial period regardless of the date of the application. Individuals failing to submit license renewal fees on or before March 1 of the year for renewal shall be required to successfully pass the next administration of the examination in order to renew a license.

(i) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

(j) A licensee shall keep such books, accounts and records as will enable the commission to determine whether such licensee is in compliance with the provisions of this chapter, and rules and regulations made pursuant thereto, and any other law, rule and regulation applicable to the conduct of such business. The commission and its employees or representatives shall have the right to enter and make inspections of any place where the auction business is carried on and inspect and copy any record pertaining to the auction business under this chapter. The commission may conduct or cause to be conducted an examination or audit of the books and records of any licensee at any time the commission deems proper, the cost of the examination or audit to be borne by the licensee. The refusal of access to the books and records shall be cause for the revocation of its license.

SOURCES: Laws, 1995, ch. 405 § 9; Laws, 1997, ch. 588, § 26; Laws, 2007, ch. 309, § 5; Laws, 2009, ch. 476, § 4; reenacted without change, Laws, 2010, ch. 335, § 9; reenacted without change, Laws, 2013, ch. 415, § 9; reenacted without change, Laws, 2016, ch. 348, § 9, eff from and after July 1, 2016.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Exemption from examination requirement for residents, see § 73-4-21.

Exemption from examination requirement for nonresidents, see § 73-4-23.

Requirements for holders of auction gallery licenses, see § 73-4-27.

Bonds of applicants for licenses, see § 73-4-29.

Form, terms, conditions and duration of bonds, see § 73-4-31.

Procedure for recovery on bonds, see § 73-4-33.

§ 73-4-19. Procedure for submission and processing of complaints against licensees; remedies for violations by licensees; judicial review of disciplinary actions.

(1) The commission may, upon its own motion or upon the complaint in writing of any person, provided the complaint and any evidence presented with it establishes a prima facie case, hold a hearing and investigate the actions of any auctioneer or auction firm, or any person who holds himself out as an auctioneer or auction firm.

(2) Any person desiring to make a complaint against a licensee shall submit a complaint to the commission in verified form as prescribed by the commission. Upon receipt of a properly verified complaint, the commission shall send a copy of the complaint to the affected licensee by certified mail, and

the licensee shall make answer to the complaint in writing within twenty (20) days after receipt of the complaint. The licensee shall mail a copy of his response to the commission and the complainant. Upon receipt of the licensee's response or lapse of twenty (20) days, the commission shall make investigation of the underlying allegations of the complaint, and upon a finding of probable cause that a violation of this chapter has occurred, the commission shall order a hearing for the licensee to appear and show cause why he should not be disciplined for a violation of this chapter.

(3)(a) All hearings held pursuant to this chapter shall be held at the offices of the commission. The commission, for good cause shown, may order that a hearing be held in another location convenient to all parties.

(b) The commission shall give the complainant and the affected licensee twenty (20) days' notice of any hearing upon a complaint. Such notice shall be by United States certified mail.

(c) Any party appearing before the commission may be accompanied by counsel.

(d) The commission or its executive director shall have the right to subpoena witnesses and documents as they deem necessary for the proper conduct of the hearing. The commission shall not entertain a motion for a continuance for failure of a witness to appear unless such witness shall have been duly subpoenaed.

(e)(i) Before commencing a hearing, the chairman of the commission shall determine if all parties are present and ready to proceed. If the complainant fails to attend a hearing without good cause shown, the complaint shall be dismissed summarily and all fees and expenses of convening the hearing shall be assessed to, and paid by, the complainant. If any affected licensee fails to appear for a hearing without good cause shown, such licensee shall be presumed to have waived his right to appear and be heard.

(ii) Upon the chairman's determination that all parties are ready to proceed, the chairman shall call the hearing to order and the complainant and the licensee may give opening statements. At the request of any party, the chairman shall order the sequestration of nonparty witnesses. The complainant shall then present his complaint through sworn testimony and the production of physical evidence. The licensee, any counsel and any member of the commission may ask questions of witnesses.

(iii) The licensee shall then present his case in rebuttal with equal right of cross-examination of the parties. At the completion of the evidence, all parties may give closing statements.

(iv) At the conclusion of testimony and argument, the commission may go into closed session for deliberation.

(v) At the conclusion of deliberations, the commission may announce the commission's decision in an open session, and shall notify the parties of its decision by mail within ten (10) days after the commission reaches its decision.

(4) Service of notice to the party shall be considered to have been given if the notice was personally served on the licensee, applicant or complainant or

if the notice was sent by certified United States mail to the licensee, applicant or complainant to that party's last known address of record with the board.

(5) No person whose license has been revoked hereunder may apply for a new license for a period of at least five (5) years. A person whose license has been denied, suspended or revoked may not apply in that person's name or in any other manner within the period during which the order of denial, suspension or revocation is in effect, and no firm, partnership or corporation in which any person whose license has been denied, suspended or revoked has a substantial interest or exercises management responsibility or control may be licensed during the period. The procedure for the reissuance of a license that is for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(6) Any civil or monetary penalty, fine or other costs imposed by the commission under this chapter shall become due and payable within the time allowed by the commission for payment thereof. Failure of the licensee or party to pay all penalties or fines so assessed as ordered by the commission shall, unless an appeal is taken and perfected within the time and in the manner provided in this chapter, result in an automatic revocation of such licensee's license. In addition, if any amounts assessed against a party by final order of the commission become otherwise uncollectible or payment is in default, and if all the right to appeal has passed, the order of the commission containing the amount of money assessed by the commission may be filed with the appropriate clerk of the court in the county in which the licensee or party is located. The order shall constitute a judgment and the filing of such final order shall have the full force and effect of a judgment duly docketed in the office of such clerk and may be enforced in the same manner and with the same effect as that provided by law in respect to executions issued against property upon judgments of a court of record.

(7) The commission may also assess and levy upon any licensee or applicant for licensure the costs incurred or expended by the commission in the investigation and prosecution of any licensure or disciplinary action, including, but not limited to, the cost of process service, court reports, expert witness, investigators and attorney fees.

(8) The commission may, upon its own motion, summarily suspend a license when the interest, health, safety or welfare of the public is at risk, such as in the event of a potential loss of consigned items or potential loss of funds. If the commission suspends summarily a license under the provisions of this subsection, a hearing must begin within twenty (20) days after such suspension begins, unless continued at the request of the licensee.

(9) Any person aggrieved by an action of the commission may file an appeal of such action in the Circuit Court of Hinds County. Any appeal must be accompanied by an attested copy of the record of the hearing before the commission. An appeal must, however, be filed with the Circuit Court of the First Judicial District of Hinds County, Mississippi, within thirty (30) days immediately following the date of the commission's decision, unless the court,

for good cause shown, extends the time. Appeals may be taken to the Mississippi Supreme Court as provided by law from any final judgment of the circuit court. If the board appeals from any judgment of the circuit court, no bond shall be required of it in order to perfect its appeal. Any actions taken by the commission in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

(10) If any licensee is indicted in this or any other state for forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or other offense, and a certified copy of the indictment is filed with the commission or other proper evidence is given to it, the commission may, in its discretion, suspend the license issued to the licensee pending trial of the charges.

(11) If the revocation or suspension of a license issued to any member of a partnership, or to any officer of an association, corporation or organization to whom an auction license has been issued, the license issued to the partnership, association, corporation or organization shall be revoked by the commission unless, within a time fixed by the commission, the connection of the member of the partnership is severed and his interest in the partnership and his share in its activities brought to an end, or the officer of the association, corporation or organization is discharged and has no further participation in its activities.

(12) Nothing in this section shall be deemed as an exclusive remedy or prevent or proscribe any person's right to petition a court of law or equity for redress of a grievance against a licensee or any other entity.

SOURCES: Laws, 1995, ch. 405 § 10; Laws, 1996, ch. 507, § 29; Laws, 2009, ch. 476, § 5; reenacted and amended, Laws, 2010, ch. 335, § 10; reenacted without change, Laws, 2013, ch. 415, § 10; reenacted and amended, Laws, 2016, ch. 348, § 10, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment, in (9), substituted "Circuit Court of the First Judicial District of Hinds County, Mississippi" for "Chancery Court of Hinds County" in the third sentence, and "circuit court" for "chancery court" in the fourth and fifth sentences.

Cross References — Grounds for disciplinary proceedings against licensees, see § 73-4-25.

Suspension of state issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

§ 73-4-21. Exemption from examination requirement for residents.

(1) Any person who has practiced the auctioneering profession in this state and has been a resident of the State of Mississippi for at least two (2) years before July 1, 1995, may apply for an auctioneer's license hereunder

without taking the examination as set forth in Section 73-4-17. The requirements for such an application are as follows:

(a) Submit an application as provided in this chapter.

(b) Submit an affidavit with the application that such applicant has been a practicing auctioneer and a resident of the State of Mississippi for at least two (2) years before July 1, 1995, and that such applicant has actually called bids in at least three (3) sales in the past one (1) year.

(c) Tender with the application the license fee set by the commission.

(d) Tender proof of financial responsibility in the form of a surety bond in the sum of Ten Thousand Dollars ($10,000.00).

(2) If, upon verification of the information contained in the application, the individual is found to be otherwise qualified, the commission shall issue the applicant a license without examination.

SOURCES: Laws, 1995, ch. 405, § 11; Repealed by Laws, 2009, ch. 476, § 12; reenacted without change, Laws, 2010, ch. 335, § 11; reenacted without change, Laws, 2013, ch. 415, § 11; reenacted without change, Laws, 2016, ch. 348, § 11, eff from and after July 1, 2016.

Editor's Note — Section 73-4-21 was repealed by Laws of 2009, ch. 476, § 12, effective July 1, 2009. It was subsequently reenacted by Laws of 2010, ch. 335, § 11, effective from and after July 1, 2010, which had the effect of resurrecting the section.

Amendment Notes — The 2016 amendment reenacted the section without change.

§ 73-4-23. Exemption from examination requirements for nonresidents.

Any auctioneer who is licensed in a state that (a) has requirements equal to the requirements of this chapter, (b) has requirements that have been approved by the commission, after a review of such state's licensing law, and (c) has entered into a reciprocal licensing agreement with the State of Mississippi through such state's regulatory authority over auctioneering, may apply for and be granted a license without examination. Applicants for a license through reciprocity shall furnish the commission by application the same information as that required of resident applicants. In addition to the biennial license fee, nonresidents shall pay to the commission a fee of Two Hundred Fifty Dollars ($250.00). A nonresident auctioneer shall furnish to the commission a surety bond, obligated to the State of Mississippi, in the amount of Ten Thousand Dollars ($10,000.00) prior to being issued a license. The bond shall be executed by the person seeking the license as principal and by a corporate surety, licensed to do business in this state, as surety. The bond shall otherwise be in accordance with the provisions of this chapter.

The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 1995, ch. 405 § 12; reenacted without change, Laws, 2010, ch. 335, § 12; Laws, 2013, ch. 350, § 7; reenacted and amended, Laws, 2013, ch.

415, § 12; reenacted without change, Laws, 2016, ch. 348, § 12, eff from and after July 1, 2016.

Joint Legislative Committee Note — Section 7 of ch. 350, Laws of 2013, effective from and after July 1, 2013 (approved March 18, 2013), amended this section. Section 12 of ch. 415, Laws of 2013, effective July 1, 2013 (approved March 20, 2013), reenacted and amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at its August 1, 2013, meeting.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Filing of bonds by applicants for licenses generally, see § 73-4-29.

Form, terms, conditions and duration of bonds, see § 73-4-31.

Procedure for recovery on bonds, see § 73-4-33.

§ 73-4-25. Grounds for disciplinary proceedings against licensees; penalties.

(1) The commission may refuse to issue or renew a license, place a licensee on probation or administrative supervision, suspend or revoke any license, or may reprimand or take any other action in relation to a license, including the imposition of a fine not to exceed Five Thousand Dollars ($5,000.00) for each violation upon a licensee, or applicant for licensure, under this chapter for any of the following reasons:

(a) Knowingly filing or causing to be filed a false application.

(b) Failure to enter into a written contract with a seller or consignor prior to placing or permitting advertising for an auction sale to be placed.

(c) Failure by the licensee to give the seller or consignor a signed receipt for items received for sale at auction, either by item or lot number at the time the goods are received, unless the goods are to remain in the possession of the seller or consignor.

(d) Failure to give the seller or consignor a statement or lot description, selling price, purchaser's identity and the net proceeds due to the seller or consignor.

(e) Failure to place funds received from an auction sale in an escrow or trust account, and failure to make timely settlement on escrowed funds. Absent a written agreement to the contrary, five (5) business days shall be deemed timely for settlement on personal property.

(f) Permitting an unlicensed auctioneer to call for bids in an auction sale.

(g) Having been convicted of or pled guilty to a felony in the courts of this state or any other state, territory or country. Conviction, as used in this paragraph, shall include a deferred conviction, deferred prosecution, deferred sentence, finding or verdict of guilt, an admission of guilt or a plea of nolo contendere.

(h) Any course of intentional, willful or wanton conduct by a licensee or such licensee's employees which misleads or creates a false impression among the seller, buyer, bidders and the auctioneer in the advertising, conducting and closing of an auction sale.

(i) A continued and flagrant course of misrepresentation or making false promises, either by the licensee, an employee of the licensee, or by someone acting on behalf of and with the licensee's consent.

(j) Any failure to account for or to pay over within a reasonable time funds belonging to another which have come into the licensee's possession through an auction sale.

(k) Any false, misleading or untruthful advertising.

(*l*) Any act of conduct in connection with a sales transaction which demonstrates bad faith or dishonesty.

(m) Knowingly using false bidders, cappers or pullers, or knowingly making a material false statement or representation.

(n) Commingling the funds or property of a client with the licensee's own or failing to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association located in Mississippi funds received for another person through sale at auction.

(o) Failure to give full cooperation to the commission and/or its designees, agents or other representatives in the performance of official duties of the commission. Such failure to cooperate includes, but is not limited to:

(i) Failure to properly make any disclosures or to provide documents or information required by this chapter or by the commission;

(ii) Not furnishing, in writing, a full and complete explanation covering the matter contained in a complaint filed with the commission;

(iii) Failure, without good cause, to cooperate with any request by the board to appear before it;

(iv) Not providing access, as directed by the commission, for its authorized agents or representatives seeking to perform reviews, audits or inspections at facilities or places utilized by the license holder in the auction business;

(v) Failure to provide information within the specified time allotted and as required by the board and/or its representatives or designees;

(vi) Failure to cooperate with the board or its designees or representatives in the investigation of any alleged misconduct or willfully interfering with a board investigation.

(p) A demonstrated lack of financial responsibility.

(q) Having had a license for the practice of auctioneering or the auction business suspended or revoked in any jurisdiction, having voluntarily surrendered a license in any jurisdiction, having been placed on probation in any jurisdiction, having been placed under disciplinary order(s) or other restriction in any manner for auctioneering or the auction business (a certified copy of the order of suspension, revocation, probation or disciplinary action shall be prima facie evidence of such action).

(r) Any violation of this chapter or any violation of a rule or regulation duly adopted by the commission.

(2) In addition to the acts specified in subsection (1) of this section, the commission shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1995, ch. 405 § 13; Laws, 1996, ch. 507, § 30; Laws, 2009, ch. 476, § 6; reenacted and amended, Laws, 2010, ch. 335, § 13; reenacted without change, Laws, 2013, ch. 415, § 13; reenacted without change, Laws, 2016, ch. 348, § 13, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Conduct of disciplinary proceedings, see § 73-4-19.

Standards governing performance of duties of auctioneers see § 73-4-35.

Recordkeeping requirements, see § 73-4-37.

Requirement of written contract for sale of goods, see § 73-4-39.

Advertisement of auctions, see § 73-4-41.

Requirement of license to act as auctioneer, see § 73-4-43.

Penalties for violations of chapter, see § 73-4-45.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

§ 73-4-27. Qualifications for auction firm license; termination or suspension of license; additional requirements.

(1) No person or party who is not otherwise exempt from licensure under Section 73-34-5 shall sell, or offer to sell, goods or real estate at auction in this state or perform any act for which an auction firm license is required, unless the person or party holds a currently valid license issued by the commission.

(2) Any person who is not otherwise licensed under this chapter and who only provides auction services or holds himself out as providing auction services shall do so only with a valid auction firm license issued under this section.

(3) The commission may grant an auction firm license to an auction firm that is determined to be qualified by the commission. To be eligible for license, the auction firm shall:

(a) Comply with the requirements of Sections 73-4-17 and 73-4-29 and the rules and regulations of the commission; and

(b) Employ a firm manager as required under subsection (5) of this section.

(4) An application submitted under this section for an auction firm license shall list the names of all of the owners, directors, partners or members of the applicant, as applicable.

(5) An auction firm shall designate a firm manager. The firm manager shall have sufficient authority in the operation of the auction firm to ensure compliance with this chapter and rules and regulations of the commission. If the firm manager does not have a current license issued under this chapter, the firm manager must become licensed under this chapter before the commission may issue a license under this section to the auction firm.

(6) An auction firm license issued under this section immediately shall terminate if any of the following occur:

(a) The auction firm ceases to operate as a corporation.

(b) The auction firm changes ownership or there is any change in ownership.

(c) If the auction firm is a partnership, the firm changes the number of partners in the partnership or changes the partners comprising the partnership.

(d) The auction firm changes the firm manager.

(e) The auction firm changes the name under which the firm conducts business.

(f) The auction firm changes its permanent business location.

(7) If the applicant for a firm license maintains more than one (1) place of business within the state, the applicant shall apply for and obtain an additional firm license for each branch office.

(8) A firm license shall automatically be suspended if no licensed auctioneer is engaged in business therein. Such license may be reinstated by the commission for the unexpired term upon proof that a duly licensed auctioneer has been affiliated with the firm.

(9) Any person in this state who for a fee is in the business of managing auctions to the extent such person is responsible for the advertising, consignments, promotion and/or distribution of funds must hold a valid firm license.

(10) In addition to the other requirements contained elsewhere in this chapter, the holder of an auction firm license shall comply with the following:

(a) Enter into a written contract with a licensed auctioneer to call bids prior to the start of any auction sale. A copy of such contract shall be maintained on the premises and available for inspection by the commission.

(b) The firm license and the license of its manager shall be conspicuously posted at the firm location.

(c) Maintain complete records of each sale held at the licensed premises which shall include, but shall not be limited to, consignment receipts, bidder registrations, final settlements with consignors and any other documents relevant to the conduct of the sale. These records shall be maintained for a period of one (1) year from the date of the sale.

(d) Maintain a file on all current and past employees of the auction firm for the previous year. Such file should contain the employee's name, last known address and social security number.

(e) Assume responsibility for all checks, drafts and other negotiable instruments tendered by buyers in payment for goods sold through the auction firm.

(f) Deposit all proceeds from auction sales into the licensee's escrow account and make all disbursements from such escrow account.

(g) The licensee shall make all of his records pertaining to the auction firm available to a member or employee of the commission for inspection upon demand.

SOURCES: Laws, 1995, ch. 405 § 14; Laws, 2009, ch. 476, § 7; reenacted without change, Laws, 2010, ch. 335, § 14; reenacted and amended, Laws, 2013, ch. 415, § 14; reenacted without change, Laws, 2016, ch. 348, § 14, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.
Cross References — Requirements for licenses generally, see § 73-4-17.
Bonds, see § 73-4-29.

§ 73-4-29. Filing of bonds by applicants for licenses; requirements for auctions of factory-built homes.

(1) Every person who applies for an auctioneer's license, as a condition to the granting and the retention thereof, shall file or have on file with the commission, a bond in the amount of Ten Thousand Dollars ($10,000.00).

(2) Every person or persons who apply for an auction firm license, as a condition to the granting and the retention thereof, shall file or have on file with the commission, a bond in the amount of Ten Thousand Dollars ($10,000.00).

(3)(a) Factory-built homes as defined by Section 75-49-3, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing and electrical systems), like other finished products having concealed vital parts, may present hazards to the health, life and safety of persons and to the safety of property unless properly inspected prior to sale and properly anchored and blocked at the homesite after the sale so as to provide reasonable safety and protection to their owners and users. In order to insure that these homes are properly anchored and blocked at the homesite in accordance with the rules, regulations and procedures promulgated by the State Commissioner of Insurance pursuant to his rule-making power contained in Section 75-49-5, auctions of these homes shall be restricted to factory-built housing dealers licensed pursuant to Section 75-49-9 and subject to the penalties of Section 75-49-19, except as otherwise provided in paragraph (b).

(b) An auctioneer licensed under this chapter may auction a factory-built home without obtaining a license pursuant to Section 75-49-9, if the auction is not for the sole purpose of disposing of factory-built homes and if the disposal of the factory-built home is incidental to, and a part of, an entire estate or liquidation auction. The number of such homes that may be auctioned pursuant to this paragraph is limited to three (3) being offered for sale in one (1) auction or event.

SOURCES: Laws, 1995, ch. 405 § 15; Laws, 2009, ch. 476, § 8; reenacted without change, Laws, 2010, ch. 335, § 15; reenacted without change, Laws, 2013, ch. 415, § 15; reenacted without change, Laws, 2016, ch. 348, § 15, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.
Cross References — Form, terms, conditions and duration of bonds, see § 73-4-31.
Procedure for recovery on bonds, see § 73-4-33.

§ 73-4-31. Form, terms and conditions, and duration of bonds provided under chapter; liability on bonds; cancellation of bonds.

(1) The State of Mississippi shall be the obligee under any bond under this chapter.

(2) Such bond shall be:

(a) Executed by the person seeking the license as principal and by a corporate surety, licensed to do business in this state as a surety;

(b) In such form and containing such terms and conditions as the commission prescribes;

(c) Conditioned upon the faithful performance of all obligations of a licensee under this chapter and the rules and regulations promulgated hereunder, including the obligation to account for and pay over monies and proceeds to persons who are entitled to them; and

(d) Effective from the date of its filing with the commission, such bond shall not be affected by the expiration of the license period and shall continue in full force and effect until cancelled, provided that the total and aggregate liability of the surety on a bond shall be limited to the amount specified in the bond and the continuous nature of the bond shall in no way be construed as allowing the liability of the surety under a bond to accumulate for each successive license period during which the bond is in force.

(3)(a) A licensee may not cancel a bond without the prior written approval of the commission and its approval of a substitute bond so as to provide continuous bonding of the licensee's activities.

(b) The surety on a bond may cancel a bond filed under this chapter only after the expiration of ninety (90) days from the date the surety mails a notice of intent to cancel, by registered or certified mail, return receipt requested, to the commission and to the principal of the bond.

(c) Not later than thirty (30) days prior to the date upon which a bond cancellation becomes effective, the licensee shall give written notice to the commission that a new bond has been obtained so as to provide continuous coverage of the licensee's activities.

SOURCES: Laws, 1995, ch. 405 § 16; reenacted without change, Laws, 2010, ch. 335, § 16; reenacted without change, Laws, 2013, ch. 415, § 16; reenacted without change, Laws, 2016, ch. 348, § 16, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.

§ 73-4-33. Procedure for recovery on bonds; exclusivity of remedy.

(1) If any licensee fails, or is alleged to have failed, to meet the obligations under this chapter and the rules and regulations promulgated hereunder, the commission shall hold a hearing and determine whether there has been such a failure, determine those persons who are proven claimants under the bond and, if appropriate, distribute the bond proceeds to the proven claimants.

(2) Actions upon the bond and the right to payment under the bond shall extend solely to the commission, except that if the commission has not initiated action under the bond by scheduling and holding a hearing, by litigation or otherwise, within thirty (30) days of a written request to do so, any claimant may initiate an action in the Circuit Court of Hinds County, Mississippi, to require the commission to take action.

(3) If, after a hearing, the commission determines that proven claims exceed the amount of the bond proceeds, the proceeds shall be prorated among proven claimants in the ratio that the amount of their proven claim bears to the total amount of all proven claims.

(4) The determination of the commission as to the fact and the amount of liability under the bond and the amount distributed to the claimants under the bond shall be binding upon the principal and surety of the bond.

(5) All hearings held under this section shall be held in accordance with the laws of this state.

(6) The existence of the bond and the bond recovery procedure shall in no way affect or alter any other right or remedy which a person may have under applicable law.

SOURCES: Laws, 1995, ch. 405 § 17; reenacted without change, Laws, 2010, ch. 335, § 17; reenacted without change, Laws, 2013, ch. 415, § 17; reenacted without change, Laws, 2016, ch. 348, § 17, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Standards governing performance of duties of auctioneers see § 73-4-35.

§ 73-4-35. Standards governing performance of duties of auctioneers; accounting and payment of monies to owners or consignors of goods involved in auction.

(1) In performing the duties of an auctioneer, every auctioneer shall follow all reasonable requests of the owner or consignor of the goods being sold at the auction. Every auctioneer shall perform such auctioneer's duties so that the highest or most favorable offer made by a member of the audience is accepted, and shall otherwise perform such duties in accordance with the highest standards of the auctioneering profession.

(2)(a) Every licensee, within five (5) business days after the sale transaction, shall account to, or provide an accounting for, those persons who own or who are acting as consignor of goods which are the subject of an auction engaged in or conducted by such licensee or upon such licensee's premises.

(b) Every licensee, within five (5) business days after a sale of goods and at closing of the sale, shall pay over, or provide for the paying over of, all monies and proceeds due to the owner or consignor of goods which was the subject of an auction engaged in or conducted by such licensee or upon such licensee's premises.

SOURCES: Laws, 1995, ch. 405 § 18; reenacted without change, Laws, 2010, ch. 335, § 18; reenacted and amended, Laws, 2013, ch. 415, § 18; reenacted without change, Laws, 2016, ch. 348, § 18, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Grounds for disciplinary proceedings, see § 73-4-25.

Penalties for violations, see § 73-4-45.

§ 73-4-37. Recordkeeping requirements.

Each licensee shall keep and maintain in a safe place for a period of not less than two (2) years complete and correct records and accounts pertaining to such licensee's licensed activity, including the name and address of the owner or consignor of all goods involved in such activities, a description of such goods, the terms and conditions of the acceptance of such goods and accounts of all monies received and paid out, whether on the licensee's own behalf or as agent, as a result of such activities.

SOURCES: Laws, 1995, ch. 405 § 19; reenacted without change, Laws, 2010, ch. 335, § 19; reenacted without change, Laws, 2013, ch. 415, § 19; reenacted without change, Laws, 2016, ch. 348, § 19, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Grounds for disciplinary proceedings, see § 73-4-25.

Penalties for violations of chapter, see § 73-4-45.

§ 73-4-39. Requirement of written contract for sale of goods; time period for retention of contract.

Except with respect to goods sold through an auction firm, no licensee shall sell goods at an auction until the auctioneer or auction firm involved has first entered into a written contract with the owner or consignor of such goods, which contract sets forth the terms and conditions upon which such auctioneer or auction firm accepts the goods for sale. A copy of every written contract shall be retained for a period of two (2) years from the date of the auction.

SOURCES: Laws, 1995, ch. 405 § 20; Laws, 2009, ch. 476, § 9; reenacted without change, Laws, 2010, ch. 335, § 20; reenacted without change, Laws, 2013, ch. 415, § 20; reenacted without change, Laws, 2016, ch. 348, § 20, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Grounds for disciplinary proceedings, see § 73-4-25.
Penalties for violations of chapter, see § 73-4-45.

§ 73-4-41. Advertisement of auctions.

All advertisements of auctions shall disclose:

(a) The auctioneer's name and the name of the auction firm involved; and

(b) Whether the auction is to be absolute or with reserve; and

(c) The auctioneer's or auction firm's auction license number.

SOURCES: Laws, 1995, ch. 405 § 21; Laws, 2009, ch. 476, § 10; reenacted without change, Laws, 2010, ch. 335, § 21; reenacted without change, Laws, 2013, ch. 415, § 21; reenacted without change, Laws, 2016, ch. 348, § 21, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.

§ 73-4-43. Requirement of license; penalties for unlicensed conduct.

(1) An individual may not act as an auctioneer without first having obtained and having in effect the license required under this chapter.

(2) Any person, except a licensed auctioneer who shall have become exempt by reason of compliance with the applicable provisions of this chapter, may not operate an auction firm without having obtained and having in effect a license for such auction firm as required under this chapter.

(3) A person who violates the provisions of this section shall be fined, upon conviction, not more than One Thousand Dollars ($1,000.00).

(4) When the commission or its authorized designee determines that person or party not licensed under this chapter is engaged in or is believed to be engaged in activities for which a license is required under this chapter, the commission or its designee may issue an order requiring that person to desist immediately and refrain from such conduct or activities. The affected person or party may appeal the issuance of the cease and desist order by filing notice of appeal within seven (7) calendar days after service of the order. A hearing must be held within twenty (20) days after a notice of appeal has been timely filed. Service of the cease and desist order shall be considered to have been given if the notice or order was personally served on the person or party or if the order was mailed by certified United States mail to the person's or party's last known address available to the commission. A person or party who has been issued an order to cease and desist that has become final either through default or administrative proceeding before the commission may not engage in the activity or conduct which is the subject of the order. A cease and desist order issued by the commission shall be enforceable in the courts of competent jurisdiction in this state.

(5) Any person or party that practices, offers to practice, attempts to practice, or holds oneself out to practice as an auctioneer, auction firm, or any

other licensee under this chapter without being licensed by the commission shall, in addition to any other penalty provided by law, pay a civil penalty to the commission in an amount not to exceed Five Thousand Dollars ($5,000.00) for each offense as determined by the commission. The civil penalty shall be paid within sixty (60) calendar days after the effective date of the order imposing the penalty. The order shall constitute a judgment and may be filed and execution had thereon in the same manner from any court of record.

SOURCES: Laws, 1995, ch. 405 § 22; Laws, 2009, ch. 476, § 11; reenacted without change, Laws, 2010, ch. 335, § 22; reenacted without change, Laws, 2013, ch. 415, § 22; reenacted without change, Laws, 2016, ch. 348, § 22, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.
Cross References — Grounds for disciplinary proceedings, see § 73-4-25.
Penalties for violations of chapter, see § 73-4-45.

§ 73-4-45. Penalties for violations of chapter.

Any person who violates any provision of this chapter for which a specific penalty is not provided, upon conviction, shall be fined not more than One Thousand Dollars ($1,000.00).

SOURCES: Laws, 1995, ch. 405 § 23; reenacted without change, Laws, 2010, ch. 335, § 23; reenacted without change, Laws, 2013, ch. 415, § 23; reenacted without change, Laws, 2016, ch. 348, § 23, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.
Cross References — Grounds for disciplinary proceedings, see § 73-4-25.

§ 73-4-47. Proceedings for injunctions.

The commission may maintain an action in the name of the State of Mississippi to enjoin any person from engaging, without a license issued under this chapter or pursuant to an exemption defined in this chapter, in any activity for which a license is required under this chapter.

SOURCES: Laws, 1995, ch. 405 § 24; reenacted without change, Laws, 2010, ch. 335, § 24; reenacted without change, Laws, 2013, ch. 415, § 24; reenacted without change, Laws, 2016, ch. 348, § 24, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.
Cross References — Requirement of license and penalties for unlicensed conduct, see § 73-4-43.

§ 73-4-49. Charging of violations of chapter.

In charging any person in an affidavit, information, or indictment with a violation of conducting, without a license or pursuant to an exemption of this chapter, any activity for which a license or an exemption therefor is required, it shall be sufficient to charge that the person did, upon a certain day and in certain county, engage in such activity and that such person did not have a license or exemption to do so. No further facts need to be averred concerning the matter.

SOURCES: Laws, 1995, ch. 405 § 25; reenacted without change, Laws, 2010, ch. 335, § 25; reenacted without change, Laws, 2013, ch. 415, § 25; reenacted without change, Laws, 2016, ch. 348, § 25, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.
Cross References — Penalties for violations of chapter, see § 73-4-45.

§ 73-4-51. Appropriations.

All new programs authorized in this chapter are subject to the availability of funds specifically appropriated therefor by the Legislature.

SOURCES: Laws, 1995, ch. 405 § 26; reenacted without change, Laws, 2010, ch. 335, § 26; reenacted without change, Laws, 2013, ch. 415, § 26; reenacted without change, Laws, 2016, ch. 348, § 26, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment reenacted the section without change.

§ 73-4-53. Repealed.

Repealed by Laws of 2016, ch. 348, § 27, effective July 1, 2016.
§ 73-4-53. Laws, 2009, ch. 476, § 13; reenacted and amended, Laws, 2010, ch. 335, § 27; Laws, 2013, ch. 415, § 27, eff from and after July 1, 2013.

Editor's Note — Former § 73-4-53 provided for the repeal of the Mississippi Auctioneers License Act, §§ 73-4-1 through 73-4-51, effective July 1, 2016.

CHAPTER 5

Barbers

Sec.
73-5-1. Board of barber examiners [Repealed effective July 1, 2020].
73-5-3. Officers and employees; compensation; common seal; records; quorum [Repealed effective July 1, 2020].
73-5-5. Money received by board to be deposited in special fund; regulation of fund; audit; suspension of board members [Repealed effective July 1, 2020].
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73-5-21. Persons having practiced barbering in another state or country or in military service [Repealed effective July 1, 2020].
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73-5-29. Fees [Repealed effective July 1, 2020].
73-5-31. Licensing of nonresidents; additional fee [Repealed effective July 1, 2020].
73-5-33. Issuance of licenses for barber shops; fees; enforcement of licensing requirements; notification of board of locations of licensees [Repealed effective July 1, 2020].
73-5-35. Barber school licenses; fees [Repealed effective July 1, 2020].
73-5-37. Annual renewals [Repealed effective July 1, 2020].
73-5-39. What constitutes practice of barbering [Repealed effective July 1, 2020].
73-5-41. Exemptions [Repealed effective July 1, 2020].
73-5-43. Certain acts prohibited [Repealed effective July 1, 2020].
73-5-45. Repeal of Sections 73-5-1 through 73-5-43.

§ 73-5-1. Board of barber examiners [Repealed effective July 1, 2020].

The State Board of Barber Examiners is continued and reconstituted as follows: The Board of Barber Examiners shall consist of five (5) members, to be appointed by the Governor, with the advice and consent of the Senate, one (1) member to be appointed from each of the congressional districts as existing on January 1, 1991. Each member shall be a practical barber and a qualified elector of this state. He shall have been engaged in the practice of barbering in the State of Mississippi for at least five (5) years immediately before the time of his appointment and shall be a person of good moral character. From and after July 1, 1983, the appointments to the board shall be made in the manner hereinafter provided, and the present members of the State Board of Barber Examiners whose terms have not expired by July 1, 1983, shall continue to serve until their successors have been appointed and qualified. The Governor shall appoint, with the advice and consent of the Senate, five (5) members from the congressional districts as follows: The member from the First Congressional District shall be appointed for a term of two (2) years to commence on July 1, 1983; the member from the Second Congressional District shall be appointed for a term of four (4) years to commence on July 1, 1984; the member from the Third Congressional District shall be appointed for a term of two (2) years to commence on July 1, 1983; the member from the Fourth Congressional District shall be appointed for a term of four (4) years to commence on July 1, 1984; and the member from the Fifth Congressional District shall be appointed for a term of one (1) year to commence on July 1, 1983. The members of the board as constituted on July 1, 2002, whose terms have not expired shall serve the balance of their terms, after which time the membership of the board shall be appointed as follows: There shall be appointed one (1) member of the board from each of the four (4) Mississippi congressional districts as they currently exist, and one (1) from the state at large, and the Governor shall make appointments from the congressional district having the smallest number of board members until the membership includes one (1) member from each district as required. From and after July 1, 2002, no member of the board who is connected in any way with any barbering school shall participate in the administration of examinations of barber applicants. From and after July 1, 2004, no member of the board shall be connected in any way with any school in which barbering is taught.

All members of the board shall be appointed by the Governor, with the advice and consent of the Senate, for terms of four (4) years each from the expiration date of the previous term, until their successors have been appointed and qualified. No member of the board shall hold any elected office. Appointments made to fill a vacancy of a term shall be made by the Governor within sixty (60) days after the vacancy occurs.

The Governor may remove any one or more members of the board for just cause. Members appointed to fill vacancies caused by death, resignation or removal of any member or members shall serve only for the unexpired term of their predecessors. Any member who does not attend two (2) consecutive meetings of the board for reasons other than illness of the member shall be subject to removal by the Governor. The president of the board shall notify the Governor in writing when any such member has failed to attend two (2) consecutive regular meetings.

SOURCES: Codes, 1930, § 3863; 1942, § 8725; Laws, 1930, ch. 131; Laws, 1940, ch. 134; Laws, 1960, ch. 378, § 1; Laws, 1983, ch. 489, § 1; reenacted and amended, Laws, 1991, ch. 508, § 1; reenacted without change, Laws, 1997, ch. 511, § 1; reenacted and amended, Laws, 2002, ch. 558, § 1; reenacted without change, Laws, 2004, ch. 309, § 1; reenacted without change, Laws, 2008, ch. 303, § 1; reenacted without change, Laws, 2011, ch. 322, § 2, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the Source line. The reference to "Laws 1983, ch. 481" was changed to "Laws, 1983, ch. 489." The Joint Committee ratified the correction at its April 26, 2001, meeting.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — General powers and duties of governor, see § 7-1-5.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application.

1. Validity.

Regulation of barbering profession is within state's police power. Clark v. State, 169 Miss. 369, 152 So. 820 (1934).

Legislature has power to create board to find facts and carry out general purpose of statute by reasonable rules and regulations. Clark v. State, 169 Miss. 369, 152 So. 820 (1934).

2. Construction and application.

This section [Code 1942, § 8725] and other sections indicate that the board of barber examiners exercises a part of the sovereignty of the state, and that it is not a private body, with any independent control over its funds nor any private rights therein. Causey v. Phillips, 191 Miss. 891, 4 So. 2d 215 (1941).

Members of the board of barber examiners are state officers, and their offices are state offices, and therefore, the state auditor had the right to maintain suit upon the bond of the secretary of the board for the alleged misapplication of funds of the board. Causey v. Phillips, 191 Miss. 891, 4 So. 2d 215 (1941).

Supreme court will not give opinion advising barbers whether they can safely continue to practice barbering without complying with barbering statute. Baldwyn v. Board of Barber Exmrs., 164 Miss. 744, 145 So. 240 (1933).

If criminal proceedings have been commenced, or threatened to be commenced, by board of barber examiners against complainants, that fact should be specifically averred in bill to enjoin board from enforcing barbering statute. Baldwyn v. Board of Barber Exmrs., 164 Miss. 744, 145 So. 240 (1933).

Bill to enjoin board of barber examiners from enforcing barbering statute stated no cause of action. Baldwyn v. Board of Barber Exmrs., 164 Miss. 744, 145 So. 240 (1933).

RESEARCH REFERENCES

ALR. Validity of statute establishing or authorizing minimum price schedules for barbers. 54 A.L.R.3d 916.

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 1, 2 et seq.

CJS. 53 C.J.S., Licenses § 58, 59.

§ 73-5-3. Officers and employees; compensation; common seal; records; quorum [Repealed effective July 1, 2020].

The board shall elect a president and secretary and shall adopt and use a common seal for the authentication of its records and orders. The secretary shall keep a record of all proceedings and acts of the board and an accurate account of all funds received and disbursed, which shall be considered as public records.

The secretary shall execute and file with the Secretary of State a bond in the sum of Ten Thousand Dollars ($10,000.00) conditioned according to law, the bond to be made in a surety company authorized to do business in this state and approved by the Governor. The premium for the bond shall be paid out of the funds in the board's special fund in the State Treasury.

A majority of the board shall constitute a quorum, and it is authorized to perform the requirements of this chapter at any regular or special meeting called for that purpose.

Each member of the board shall receive per diem in accordance with Section 25-3-69 when actually attending to the work of the board or any of its committees, and shall be reimbursed for traveling expenses in accordance with Section 25-3-41 in carrying out the provisions of this chapter. The board shall employ an executive director with compensation to be established by the State Personnel Board, and the executive director shall devote his or her full time to oversee all day-to-day operations of the board. The board may employ four (4) inspectors, one (1) to be appointed from each of the four (4) congressional districts, to make periodic inspections of all barbershops throughout the state and one (1) chief inspector to be appointed from the state at large to supervise inspections and investigations statewide. The board shall employ the necessary personnel to carry out the provisions of this chapter, and maintain and pay the expenses of an office to be located in the City of Jackson. All per diem, salaries and expenses shall be paid exclusively from the funds in the board's special fund, and salaries and expenses of personnel may be disbursed monthly.

The board shall require such of its employees as it may consider necessary to make bond and file same with the Secretary of State in such sums as it may consider necessary to protect the interests of the barbers of the State of Mississippi and require the faithful performance of their duties.

SOURCES: Codes, 1930, § 3864; 1942, § 8726; Laws, 1932, ch. 118; Laws, 1940, ch. 134; Laws, 1942, ch. 325; Laws, 1946, ch. 240; Laws, 1960, ch. 378, § 2; Laws, 1968, ch. 444, § 1; Laws, 1974, ch. 540, § 1; Laws, 1981, ch. 427, § 1; Laws, 1982, ch. 450, § 1; reenacted, Laws, 1983, ch. 489, § 2; Laws, 1990, ch. 521, § 1; reenacted, Laws, 1991, ch. 508, § 2; Laws, 1992, ch. 502, § 7; Laws, 1995, ch. 359, § 1; reenacted and amended, Laws, 1997, ch. 511, § 2; reenacted and amended, Laws, 2002, ch. 558, § 2; reenacted without change, Laws, 2004, ch. 309, § 2; reenacted without change, Laws, 2008, ch. 303, § 2; Laws, 2010, ch. 477, § 1; reenacted without change, Laws, 2011, ch. 322, § 3, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

§ 73-5-5. Money received by board to be deposited in special fund; regulation of fund; audit; suspension of board members [Repealed effective July 1, 2020].

(1) All fees and any other monies received by the board shall be deposited in a special fund that is created in the State Treasury and shall be used for the implementation and administration of this chapter when appropriated by the Legislature for such purpose. The monies in the special fund shall be subject to all provisions of the state budget laws that are applicable to special fund

agencies, and disbursements from the special fund shall be made by the State Treasurer only upon warrants issued by the State Fiscal Officer upon requisitions signed by the president of the board and countersigned by the secretary of the board. Any interest earned on this special fund shall be credited by the State Treasurer to the fund and shall not be paid into the State General Fund. Any unexpended monies remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund.

(2) The State Auditor shall audit the financial affairs of the board and the transactions involving the special fund at least once a year in the same manner as for other special fund agencies. In addition, the Governor, in his discretion, shall have the power from time to time to require an audit of the financial affairs of the board, the same to be made by the State Auditor upon request of the Governor. The Governor shall have the power to suspend any member of the board who shall be found short in any account until such time as it shall be definitely determined whether such shortage was the result of an act of dishonesty on the part of the member.

SOURCES: Codes, 1942, § 8727; Laws, 1932, ch. 118; Laws, 1938, ch. 176; Laws, 1983, ch. 489, § 3; reenacted, Laws, 1991, ch. 508, § 3; Laws, 1992, ch. 502, § 1; reenacted without change, Laws, 1997, ch. 511, § 3; reenacted without change, Laws, 2002, ch. 558, § 3; reenacted without change, Laws, 2004, ch. 309, § 3; reenacted without change, Laws, 2008, ch. 303, § 3; reenacted without change, Laws, 2011, ch. 322, § 4, eff from and after July 1, 2011.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

See § 73-5-45 for the date for repeal of this section.

Cross References — State depositories generally, see §§ 27-105-1 et seq.

JUDICIAL DECISIONS

1. In general.

The board of barber examiners exercises part of the sovereignty of the state, and so is not a private body, with any independent control over its funds or with any private rights therein. Causey v. Phillips, 191 Miss. 891, 4 So. 2d 215 (1941).

Members of the board of barber examiners are state officers, and their offices are state offices, and therefore the state auditor had the right to maintain suit upon the bond of the secretary of the board for the alleged misapplication of funds of the board. Causey v. Phillips, 191 Miss. 891, 4 So. 2d 215 (1941).

In an action by the state auditor on the bond of the secretary of the board of barber examiners for misapplication of funds, it was immaterial whether the secretary was a member of the board, since in any event he would be either a public officer or employee. Causey v. Phillips, 191 Miss. 891, 4 So. 2d 215 (1941).

§ 73-5-7. Rules; inspection; records [Repealed effective July 1, 2020].

(1) The Board of Barber Examiners shall have authority to make reasonable rules and regulations for the administration of the provisions of this chapter. Provided, however, that any and all rules and regulations relating to sanitation shall, before adoption by the board, have the written approval of the State Board of Health. The Board of Barber Examiners shall adopt regulations for the guidance of registered barbers in the operation of a shop and in the practice of barbering except, however, it shall be optional with the individual barber as to whether he or she uses a mug. Any member or designee of the Board of Barber Examiners shall have the authority to enter upon and inspect any barbershop or barber school at anytime during business hours. A copy of the rules and regulations of the State Board of Barber Examiners shall be furnished to the owner or manager of each shop and barber school affected by this chapter, and such copy shall be posted in a conspicuous place in such barbershop or barber school.

(2) The board shall have authority to establish rules and regulations governing schools of barbering in this state except those schools operated by a state institution of higher learning or by a public community or junior college. The board shall have further authority to establish curriculum for such regulated schools of barbering in this state.

Each regulated school of barbering shall submit the following to the board before enrolling students:

(a) The address of proposed school, and the type and size of building in which the school is to be located;

(b) The names and addresses of owners and officers of such school, and the names, addresses and instructor license number of managers, supervisors and instructors of such school;

(c) A list of equipment and teaching aids; and

(d) A copy of the contract to be used between the school and the student.

All regulated schools of barbering in the State of Mississippi shall be required to maintain a surety bond in the amount of Twenty-five Thousand Dollars ($25,000.00) to ensure that in the event a school ceases operation, that all unused tuition fees will be refunded to the students concerned. This bond shall remain in effect for the duration of the school's operation.

(3) The Board of Barber Examiners shall adopt rules and regulations establishing a procedure for the processing and investigation of complaints filed with the board. The board shall keep records of all complaints, and such records shall indicate the action taken on the complaints.

(4) The Board of Barber Examiners shall keep a record of its proceedings relating to the issuance, refusal, suspension and revocation of certificates of registration. The record shall also contain the name, place of business and the residence of each registered barber, and the date and number of his certificate of registration. The record shall be open to public inspection at all reasonable times.

SOURCES: Codes, 1930, § 3865; 1942, § 8728; Laws, 1930, ch. 131; Laws, 1932, ch. 118; Laws, 1983, ch. 489, § 4; reenacted, Laws, 1991, ch. 508, § 4; reenacted and amended, Laws, 1997, ch. 511, § 4; Laws, 2000, ch. 357, § 1; reenacted without change, Laws, 2002, ch. 558, § 4; reenacted without change, Laws, 2004, ch. 309, § 4; reenacted without change, Laws, 2008, ch. 303, § 4; Laws, 2010, ch. 477, § 2; reenacted without change, Laws, 2011, ch. 322, § 5, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — General duties of state board of health, see § 41-3-15.

Refusal and/or revocation of a certificate for violation of regulations prescribed as provided for in this section, see § 73-5-25.

JUDICIAL DECISIONS

1. In general.

Statute delegating general power to prescribe barbers' qualifications to board of examiners held not unconstitutional as vesting in board absolute discretion to grant or withhold licenses. Clark v. State, 169 Miss. 369, 152 So. 820 (1934).

RESEARCH REFERENCES

ALR. Validity of statute establishing or authorizing minimum price schedules for barbers. 54 A.L.R.3d 916.

§ 73-5-8. Qualifications for certificate of registration as barber instructor [Repealed effective July 1, 2020].

Any person is qualified to receive a certificate of registration as a barber instructor who:

(a) Is eighteen (18) years of age or older;

(b) Is of good moral and temperate habits;

(c) Is able to read, write and speak English;

(d) Possesses a high school education or its equivalent;

(e) Has successfully completed not less than fifteen hundred (1500) hours at a barbering school approved by the State Board of Barber Examiners and holds a valid certificate of registration to practice barbering;

(f) Has (i) not less than two (2) years of active experience as a registered barber and has successfully completed not less than six hundred (600) hours of barber instructor training at a school approved by the board, or (ii) less than two (2) years of active experience as a registered barber and has successfully completed not less than one thousand (1,000) hours of barber instructor training at a school approved by the board; and

(g) Has passed a satisfactory examination conducted by the board to determine his fitness to practice as a barber instructor.

All persons who have received a certificate of registration as a barber instructor from the board before July 1, 2002, shall be considered to have met the requirements of this section, and all those certificates of registration shall be renewable as otherwise provided in this chapter.

The board will implement an active and inactive instructor license. In order to renew an active license, instructors holding an active license shall be required to submit proof of twelve (12) hours of continuing education each year to the Board of Barber Examiners. That education shall be acquired in classes or trade shows teaching materials that are approved by the board. Instructors holding an inactive license shall be required to submit proof of twelve (12) hours continuing education before upgrading to an active status.

SOURCES: Laws, 1985, ch. 341, § 1; reenacted, Laws, 1991, ch. 508, § 5; reenacted and amended, Laws, 1997, ch. 511, § 5; reenacted and amended, Laws, 2002, ch. 558, § 5; reenacted without change, Laws, 2004, ch. 309, § 5; Laws, 2005, ch. 423, § 1; reenacted without change, Laws, 2008, ch. 303, § 5; Laws, 2010, ch. 477, § 3; reenacted without change, Laws, 2011, ch. 322, § 6, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — Conduct of examinations of applicants for certificates of registration to practice as barber or barber instructor, see § 73-5-17.

Provision that certificate of registration as registered barber or barber instructor shall be issued whenever the applicable provisions of this chapter have been complied with, see § 73-5-19.

Requirement of notice and a hearing prior to revocation or suspension or refusal to revoke or suspend any certificate of registration as registered barber or barber instructor, see § 73-5-27.

Provisions relative to fees, annual renewal of certificates, restoration of expired certificates, and issuance of duplicate certificates, see §§ 73-5-29 and 73-5-37.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statute or ordinance regulating beauty shops or beauty culture schools. 56 A.L.R.2d 879.

Validity of statute establishing or authorizing minimum price schedules for barbers. 54 A.L.R.3d 916.

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

CJS. 53 C.J.S. Licenses §§ 58, 59.

§ 73-5-9. Requirement of registration [Repealed effective July 1, 2020].

(1) No person shall practice or attempt to practice barbering in the State of Mississippi without a certificate of registration as a registered barber issued pursuant to the provisions of this chapter.

(2) No person shall be a barber instructor in the State of Mississippi without a certificate of registration as a barber instructor issued pursuant to the provisions of this chapter.

(3) Any person or persons who violates any provision of this chapter shall be guilty of a misdemeanor, punishable upon conviction in a court of competent jurisdiction as follows:

(a) For the first offense, by a fine of not less than Twenty-five Dollars ($25.00) nor more than Five Hundred Dollars ($500.00);

(b) For the second offense, by a fine of not less than Five Hundred One Dollars ($501.00) nor more than One Thousand Dollars ($1,000.00);

(c) For the third and any later offense, by imprisonment for not less than five (5) days nor more than six (6) months in the county jail.

SOURCES: Codes, 1930, §§ 3848, 3850; 1942, § 8729; Laws, 1930, ch. 131; Laws, 1932, ch. 118; Laws, 1982, ch. 450, § 2; reenacted, Laws, 1983, ch. 489, § 5; Laws, 1985, ch. 341, § 2; reenacted, Laws, 1991, ch. 508, § 6; reenacted without change, Laws, 1997, ch. 511, § 6; reenacted without change, Laws, 2002, ch. 558, § 6; reenacted without change, Laws, 2004, ch. 309, § 6; reenacted without change, Laws, 2008, ch. 303, § 6; Laws, 2010, ch. 477, § 4; reenacted without change, Laws, 2011, ch. 322, § 7, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — Qualifications for certificate of registration as barber instructor, see § 73-5-8.

Fees for certificates of registration, see § 73-5-29.

Annual renewals of certificates of registration as barber instructor, see § 73-5-37.

What constitutes practice of barbering, see § 73-5-39.

Penalty for violation of the provisions of this section, see § 73-5-43.

Barber's eligibility to become licensed cosmetologist, see § 73-7-13.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Validity of statute establishing or authorizing minimum price schedules for barbers. 54 A.L.R.3d 916.

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

CJS. 53 C.J.S., Licenses §§ 70-72.

§ 73-5-11. Qualifications for certificate of registration as registered barber; temporary permit [Repealed effective July 1, 2020].

(1) To be eligible for enrollment at a barbering school approved by the Board of Barber Examiners, a person shall have a high school education or its equivalent, and/or shall have satisfactorily passed the ability-to-benefit examinations approved by the U.S. Department of Education.

(2) Any person is qualified to receive a certificate of registration to practice barbering:

(a) Who is qualified under the provisions of this chapter;

(b) Who is of good moral character and temperate habits;

(c) Who has completed not less than fifteen hundred (1500) hours at a barbering school approved by the State Board of Barber Examiners; and

(d) Who has passed a satisfactory examination conducted by the board of examiners to determine his fitness to practice barbering.

(3) A temporary permit to practice barbering until the next examination is given may be issued to a student who has completed not less than fifteen hundred (1500) hours at a barbering school approved by the Board of Barber

Examiners. In no event shall a person be allowed to practice barbering on a temporary permit beyond the date the next examination is given, except because of personal illness.

SOURCES: Codes, 1930, § 3852; 1942, § 8730; Laws, 1930, ch. 131; Laws, 1932, ch. 118; Laws, 1968, ch. 444, § 2; Laws, 1979, ch. 351; Laws, 1982, ch. 450, § 3; reenacted, Laws, 1983, ch. 489, § 6; reenacted, Laws, 1991, ch. 508, § 7; Laws, 1995, ch. 359, § 2; reenacted and amended, Laws, 1997, ch. 511, § 7; Laws, 1998, ch. 322, § 1; reenacted without change, Laws, 2002, ch. 558, § 7; reenacted without change, Laws, 2004, ch. 309, § 7; reenacted without change, Laws, 2008, ch. 303, § 7; reenacted without change, Laws, 2011, ch. 322, § 8, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — Conduct of examinations of applicants for certificates of registration to practice as barber or barber instructor, see § 73-5-17.

Grounds for revocation of certificate, see § 73-5-25.

Fees for certificate of registration, see § 73-5-29.

Annual renewal of certificate of registration as barber, see § 73-5-37.

Barber's eligibility to become licensed cosmetologist, see § 73-7-13.

JUDICIAL DECISIONS

1. In general.

Statute requiring applicant for registration as barber to pass satisfactory examination conducted by board of examiners held not unconstitutional as leaving determination of barbers' qualifications entirely to board's arbitrary discretion. Clark v. State, 169 Miss. 369, 152 So. 820 (1934).

RESEARCH REFERENCES

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

CJS. 53 C.J.S., Licenses §§ 62, 63, 65, 66.

§ 73-5-12. Eligibility of cosmetologists to take barber examination [Repealed effective July 1, 2020].

Any cosmetologist who can read, write and speak English and has successfully completed not less than fifteen hundred (1500) hours in an accredited school of cosmetology, and holds a valid, current license, shall be eligible to take the barber examination to secure a certificate of registration as a barber upon successfully completing six hundred (600) hours in a barber school approved by the Board of Barber Examiners.

All fees for application, examination, registration and renewal thereof shall be the same as provided for in this chapter.

SOURCES: Laws, 1982, ch. 450, § 11; reenacted, Laws, 1983, ch. 489, § 7; reenacted, Laws, 1991, ch. 508, § 8; reenacted without change, Laws, 1997, ch. 511, § 8; reenacted without change, Laws, 2002, ch. 558, § 8; reenacted without change, Laws, 2004, ch. 309, § 8; Laws, 2005, ch. 423, § 2; reenacted without change, Laws, 2008, ch. 303, § 8; reenacted without change, Laws, 2011, ch. 322, § 9, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — Fees for examination and issuance of certificate for the registered barber or registered barber instructor and renewal of certificates, see § 73-5-29.

Certain barbers being eligible to take cosmetology examination, see § 73-7-13.

§ 73-5-13. Repealed.

Repealed by Laws of 1982, ch. 450, § 12, eff from and after July 1, 1982.

[Codes, 1930, § 3853; 1942, § 8731; Laws, 1930, ch. 131; Laws, 1932, ch. 118; Laws, 1963, 1st Ex. Sess. ch. 26]

Editor's Note — Former Section 73-5-13 pertained to apprentice qualifications.

§ 73-5-15. Application for examination [Repealed effective July 1, 2020].

Each applicant for an examination shall:

Make application to the Board of Barber Examiners on blank forms prepared and furnished by the board, such application to contain proof under the applicant's oath for the particular qualifications of the applicant; and,

Furnish to the board, at the time of the filing of such application, two (2) five-inch (5″) X three-inch (3″) signed photographs of the applicant, one (1) to accompany the application, and one (1) to be returned to the applicant to be presented to the board when the applicant appears for examination; and,

Pay to the board the required fee.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Codes, 1930, § 3854; 1942, § 8732; Laws, 1930, ch. 131; Laws, 1932, ch. 118; reenacted, Laws, 1983, ch. 489, § 8; reenacted, Laws, 1991, ch. 508, § 9; reenacted without change, Laws, 1997, ch. 511; Laws, 1997, ch. 588, § 27; reenacted without change, Laws, 2002, ch. 558, § 9; reenacted without change, Laws, 2004, ch. 309, § 9; reenacted without change, Laws, 2008, ch. 303, § 9; reenacted without change, Laws, 2011, ch. 322, § 10, eff from and after July 1, 2011.

Joint Legislative Committee Note — Section 9 of ch. 511, Laws of 1997, reenacted this section without change, effective June 30, 1997. Section 27 of ch. 588, Laws of 1997, effective July 1, 1997, amended this section. As set out above, this section reflects the language of Section 27 of ch. 588, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Laws of 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Fee for taking examination, see § 73-5-29.

Barber's eligibility to become licensed cosmetologist, see § 73-7-13.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 70-72.

§ 73-5-17. Examinations [Repealed effective July 1, 2020].

The Board of Barber Examiners shall conduct examinations of applicants for certificates of registration to practice as registered barbers not less than three (3) times a year, which examination shall be had in some town or city selected by the examining board. Examinations of applicants for certificates of registration as barber instructors shall be conducted at a time and place selected by the examining board.

The examination of applicants for certificates of registration as registered barbers shall include both a practical demonstration and a written and oral test, and shall embrace the subjects usually practiced in a duly licensed shop of Mississippi under the direct and personal supervision of a registered barber. The examination of applicants for certificates of registration as barber instructors shall include such subjects as the board deems necessary to determine the applicant's fitness to practice as a barber instructor.

SOURCES: Codes, 1930, § 3855; 1942, § 8733; Laws, 1930, ch. 131; Laws, 1932, ch. 118; Laws, 1982, ch. 450, § 4; reenacted, Laws, 1983, ch. 489, § 9; Laws, 1985, ch. 341, § 3; reenacted, Laws, 1991, ch. 508, § 10; Laws, 1995, ch. 359, § 3; reenacted without change, Laws, 1997, ch. 511, § 10; reenacted without change, Laws, 2002, ch. 558, § 10; reenacted without change, Laws, 2004, ch. 309, § 10; reenacted without change, Laws, 2008, ch. 303, § 10; reenacted without change, Laws, 2011, ch. 322, § 11, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — Qualifications for certificate of registration as barber instructor, see § 73-5-8.

Qualifications for certificate of registration as registered barber, see § 73-5-11.

Fees for examination of applicants for certificates of registration, see § 73-5-29.

RESEARCH REFERENCES

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

CJS. 53 C.J.S., Licenses § 63.

§ 73-5-19. Issuance of certificate [Repealed effective July 1, 2020].

Whenever the applicable provisions of this chapter have been complied with, the Board of Barber Examiners shall issue a certificate of registration as a registered barber or barber instructor, as the case may be.

SOURCES: Codes, 1930, § 3856; 1942, § 8734; Laws, 1930, ch. 131; Laws, 1932, ch. 118; Laws, 1982, ch. 450, § 5; reenacted, Laws, 1983, ch. 489, § 10; Laws, 1985, ch. 341, § 4; reenacted, Laws, 1991, ch. 508, § 11; reenacted without

change, Laws, 1997, ch. 511, § 11; reenacted without change, Laws, 2002, ch. 558, § 11; reenacted without change, Laws, 2004, ch. 309, § 11; reenacted without change, Laws, 2008, ch. 303, § 11; reenacted without change, Laws, 2011, ch. 322, § 12, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — Qualifications for certificate of registration as barber instructor, see § 73-5-8.

Grounds for refusal to issue certificate, see § 73-5-25.

Fees for issuance of certificates of registration, see § 73-5-29.

Annual renewals of certificates of registration as barber or barber instructor, see § 73-5-37.

§ 73-5-21. Persons having practiced barbering in another state or country or in military service [Repealed effective July 1, 2020].

Any person possessed of the following qualifications shall, upon payment of the required fee, receive a certificate of registration as a registered barber:

(a) Is at least eighteen (18) years old;

(b) Is of good moral character and temperate habits; and

(c) Either has a license or certificate of registration as a practicing barber in another state or country that has substantially the same requirements for licensing or registration of barbers as are contained in this chapter, or can prove by sworn affidavits that he has lawfully practiced as a barber in another state or country for at least five (5) years immediately before making application in this state, or can show to the satisfaction of the board that he had held a rating in a branch of the military service for two (2) or more years that required him to perform the duties of a barber. The issuance of a certificate of registration by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

In addition to the above, the board may require the applicant to successfully demonstrate sufficient knowledge of the Barber Law of the State of Mississippi, as well as sufficient practical skill by requiring the applicant to take a practical examination approved by the board.

SOURCES: Codes, 1930, § 3857; 1942, § 8735; Laws, 1930, ch. 131; Laws, 1932, ch. 118; Laws, 1982, ch. 450, § 6; reenacted, Laws, 1983, ch. 489, § 11; reenacted, Laws, 1991, ch. 508, § 12; reenacted without change, Laws, 1997, ch. 511, § 12; reenacted and amended, Laws, 2002, ch. 558, § 12; reenacted without change, Laws, 2004, ch. 309, § 12; reenacted without change, Laws, 2008, ch. 303, § 12; reenacted and amended, Laws, 2011, ch. 322, § 13; Laws, 2013, ch. 350, § 8, eff from and after July 1, 2013.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — Fee for issuing certificate of registration to practicing barber from another state, see § 73-5-29.

What constitutes practice of barbering, see § 73-5-39.

§ 73-5-23. Display of certificate [Repealed effective July 1, 2020].

(1) Every holder of a certificate of registration as a registered barber shall display it in a conspicuous place adjacent to or near his or her work chair, and in plain view of the patrons of the shop in which he or she is engaged at work.

(2) It shall be the responsibility of all owners, managers, or persons in charge of a barbershop at the time of an inspection to ensure that all licenses are displayed at all times.

(3) Any owner or barber found in violation of this section shall be fined not less than Twenty-five Dollars ($25.00) nor more than Five Hundred Dollars ($500.00).

SOURCES: Codes, 1930, § 3858; 1942, § 8736; Laws, 1930, ch. 131; Laws, 1932, ch. 118; Laws, 1982, ch. 450, § 7; reenacted, Laws, 1983, ch. 489, § 12; reenacted, Laws, 1991, ch. 508, § 13; reenacted without change, Laws, 1997, ch. 511, § 13; reenacted without change, Laws, 2004, ch. 309, § 13; reenacted without change, Laws, 2008, ch. 303, § 13; Laws, 2010, ch. 477, § 5; reenacted without change, Laws, 2011, ch. 322, § 14, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — Penalty for failure to display certificate as required by this section, see § 73-5-43.

§ 73-5-25. Refusal and revocation of certificate [Repealed effective July 1, 2020].

(1) The Board of Barber Examiners may refuse to issue, or may suspend definitely or indefinitely, or revoke any certificate of registration or license for any one (1) or a combination of the following causes:

(a) Conviction of a felony shown by a certified copy of the judgment of court in which such conviction is had, unless upon a full and unconditional pardon of such convict, and upon satisfactory showing that such convict will in the future conduct himself in a law-abiding way.

(b) Gross malpractice or gross incompetency.

(c) Continued practice by a person knowingly having an infectious or contagious disease.

(d) Advertising, practicing or attempting to practice under a trade name or name other than one's own.

(e) Habitual drunkenness or habitual addiction to the use of morphine, cocaine or habit-forming drug, or any other illegal controlled substances.

(f) Immoral or unprofessional conduct.

(g) Violation of regulations that may be prescribed as provided for in Sections 73-5-7 through 73-5-43.

(2) In addition to the causes specified in subsection (1) of this section, the board shall be authorized to suspend the certificate of registration of any person for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a certificate for being out of

compliance with an order for support, and the procedure for the reissuance or reinstatement of a certificate suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a certificate suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Codes, 1930, § 3859; 1942, § 8737; Laws, 1930, ch. 131; Laws, 1932, ch. 118; Laws, 1983, ch. 489, § 13; reenacted, Laws, 1991, ch. 508, § 14; Laws, 1996, ch. 507, § 31; reenacted without change, Laws, 1997, ch. 511, § 14; reenacted without change, Laws, 2002, ch. 558, § 13; reenacted without change, Laws, 2004, ch. 309, § 14; Laws, 2005, ch. 423, § 3; reenacted without change, Laws, 2008, ch. 303, § 14; Laws, 2010, ch. 477, § 6; reenacted without change, Laws, 2011, ch. 322, § 15, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists § 12.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

5 Am. Jur. Pl & Pr Forms (Rev), Barbers and Cosmetologists, Forms 1 et seq. (licensing and regulation).

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-5-27. Hearings [Repealed effective July 1, 2020].

The Board of Barber Examiners may neither refuse to suspend or revoke, nor revoke or suspend any certificate of registration as a registered barber or barber instructor, for any of the causes enumerated in this chapter, unless the holder of such certificate has been given at least twenty (20) days' notice, in writing by registered mail, signed by the President and Secretary of the Board of Barber Examiners, setting forth the charges against such holder of such certificate and naming the time and place for a hearing upon the charge or charges, and a public hearing thereof by the Board of Barber Examiners. The person shall return a written response within ten (10) business days acknowledging receipt of the letter and confirmation of attendance at the board hearing no later than the close of business of the tenth day.

Upon the hearing of any such charge or charges the board may issue all subpoenas for all necessary witnesses for and against the accused, and require their attendance upon such hearing, may administer oaths, and may procure by process the production of all necessary books and papers, bearing or touching upon such charges against the accused.

SOURCES: Codes, 1930, § 3860; 1942, § 8738; Laws, 1930, ch. 131; Laws, 1932, ch. 118; Laws, 1982, ch. 450, § 8; reenacted, Laws, 1983, ch. 489, § 14; Laws, 1985, ch. 341, § 5; reenacted, Laws, 1991, ch. 508, § 15; reenacted without change, Laws, 1997, ch. 511, § 15; reenacted without change, Laws, 2002, ch. 558, § 14; reenacted without change, Laws, 2004, ch. 309, § 15; reenacted without change, Laws, 2008, ch. 303, § 15; Laws, 2010, ch. 477, § 7; reenacted without change, Laws, 2011, ch. 322, § 16, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — Qualifications for certificate of registration as barber instructor, see § 73-5-8.

Grounds for refusal to issue or suspension or revocation of certificate of registration or license, see § 73-5-25.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-5-29. Fees [Repealed effective July 1, 2020].

The fee for taking an examination as a registered barber shall be in the sum of not more than Fifty-five Dollars ($55.00), and the further sum of not more than Forty-five Dollars ($45.00) shall be required for the issuance of a certificate for the registered barber. The fee for taking an examination as a registered barber instructor shall be in the sum of not more than Fifty-five Dollars ($55.00), and the further sum of not more than Fifty Dollars ($50.00) shall be required for the issuance of a certificate of registration for the registered barber instructor. A fee of not more than One Hundred Fifty Dollars ($150.00) shall be required for the issuance of a certificate of registration to a practicing barber of another state as authorized by Section 73-5-21. Likewise, an annual renewal fee payable on the anniversary date of the issuance of each certificate of registration as a registered barber of not more than Forty-five Dollars ($45.00) shall be charged for the issuance of the renewal of the certificate; an annual renewal fee payable on the anniversary date of the issuance of each certificate of registration as a registered barber instructor of not more than Fifty Dollars ($50.00) shall be charged for the issuance of the renewal of the certificate; however, the renewal fee for a registered barber and barber instructor who is sixty-five (65) years of age or older shall be not more than Thirty Dollars ($30.00). No renewal fee shall be charged for registered barbers and barber instructors who are at least seventy-two (72) years of age. A fee of Ten Dollars ($10.00) for each year or any portion thereof in addition to payment of all unpaid renewal fees in arrears and the regular renewal fee shall be required for the restoration of expired certificates of registration issued pursuant to this chapter. Additionally, in order to restore any certificate of registration issued under this chapter that has been expired for a period of five (5) years or longer, the holder thereof must retake and pass the appropriate examination. A penalty of Ten Dollars ($10.00) in addition to payment of all unpaid renewal fees in arrears and the regular renewal fee shall be required for the restoration of certificates that have expired for a period of thirty (30) to sixty (60) days. A penalty of Twenty-five Dollars ($25.00) in addition to payment of all unpaid renewal fees in arrears and the regular renewal fee shall be required for the restoration of certificates that have been expired for a period greater than sixty (60) days.

The board may adopt and spread upon its minutes the rules and regulations for the issuance of a duplicate certificate for which a fee of not more than Ten Dollars ($10.00) may be charged. However, each duplicate certificate issued shall have stamped across its face the word "duplicate" and shall bear the number of the original certificate in lieu of which it is issued.

SOURCES: Codes, 1930, § 3861; 1942, § 8739; Laws, 1930, ch. 131; Laws, 1932, ch. 118; Laws, 1960, ch. 378, § 3; Laws, 1968, ch. 444, § 3; Laws, 1974, ch. 540, § 2; Laws, 1981, ch. 427, § 2; Laws, 1982, ch. 450, § 9; Laws, 1983, ch. 489, § 15; Laws, 1985, ch. 341, § 6; Laws, 1990, ch. 521, § 2; reenacted, Laws, 1991, ch. 508, § 16; Laws, 1995, ch. 359, § 4; reenacted and amended, Laws, 1997, ch. 511, § 16; Laws, 1998, ch. 322, § 2; reenacted and amended, Laws, 2002, ch. 558, § 15; reenacted without change, Laws, 2004, ch. 309, § 16; reenacted without change, Laws, 2008, ch. 303, § 16; Laws, 2010, ch. 477, § 8; reenacted without change, Laws, 2011, ch. 322, § 17, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — Qualifications for certificate of registration as barber instructor, see § 73-5-8.

Additional fee for licensing of nonresident, see § 73-5-31.

Fee for issuance of license for barbershops, see § 73-5-33.

Fees for issuance and renewal of license for barber schools, see § 73-5-35.

Barber's eligibility to become licensed cosmetologist, see § 73-7-13.

JUDICIAL DECISIONS

1. In general.

Registration fee, prescribed by law regulating practice of barbering, held not occupation tax required to be equal and in proportion to property taxes. Clark v. State, 169 Miss. 369, 152 So. 820 (1934).

RESEARCH REFERENCES

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

§ 73-5-31. Licensing of nonresidents; additional fee [Repealed effective July 1, 2020].

The board is hereby authorized to receive applications for and give examinations to persons who have not become legal residents of the State of Mississippi when such applicants comply with the laws and regulations of said board and are authorized to issue a certificate or license, as the case may be, as fully as if said applicant was a resident of the State of Mississippi. However, the board is authorized to charge a sum of not more than Twenty Dollars ($20.00) in addition to the other fees charged a resident applicant to cover the necessary expenses in making any investigation or obtaining information concerning said applicant. Upon the successful compliance with the laws of this state, such nonresident may be issued a certificate or license as a resident.

SOURCES: Codes, 1942, § 8739.3; Laws, 1960, ch. 378, § 4; Laws, 1981, ch. 427, § 3; reenacted, Laws, 1983, ch. 489, § 16; reenacted, Laws, 1991, ch. 508, § 17; reenacted without change, Laws, 1997, ch. 511, § 17; reenacted without change, Laws, 2002, ch. 558, § 16; reenacted without change, Laws, 2004, ch. 309, § 17; reenacted without change, Laws, 2008, ch. 303, § 17; reenacted without change, Laws, 2011, ch. 322, § 18, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

§ 73-5-33. Issuance of licenses for barber shops; fees; enforcement of licensing requirements; notification of board of locations of licensees [Repealed effective July 1, 2020].

(1) The board shall issue a license for each barbershop in operation in the State of Mississippi, and the board shall prescribe the rules and regulations and circulate the information necessary to obtain a license for the barbershop. A fee of not more than Fifteen Dollars ($15.00) for each chair manned by a registered barber located in the shop shall be required for the issuance of the license, and the same fee shall be required for a renewal of the license to the shop, the renewal due on the anniversary date of each year. A fee of not more than Twenty-five Dollars ($25.00) in addition to the regular renewal fee shall be required for restoration of any license that has expired for more than thirty (30) days. Any barbershop license having passed the second year anniversary date, in delinquency, shall be required to have a new shop inspection and shall hereafter pay an initial fee of not more than Forty-five Dollars ($45.00) in addition to all other fees required for restoration.

(2) All barbershop owners shall be responsible for employing only licensed barbers in the shop. Any barbershop owner found by the Board of Barber Examiners to employ an unlicensed barber or barbers shall be fined Five Hundred Dollars ($500.00) payable into the State General Fund, and shall be subject to closure until those violations are corrected. For any later violation, the fine shall be One Thousand Dollars ($1,000.00). Any barbershop operating within the State of Mississippi without a license after July 1, 1968, shall be subjected to closing by a proper order of a court of competent jurisdiction upon a proper showing that it has failed to comply with the terms of this chapter.

(3) The board may assess against any barbershop owner found to employ an unlicensed barber or barbers any of the following costs that are expended by the board in the conduct of a proceeding for violation of subsection (2): court filing fees, court costs and the cost of serving process. Any monies collected by the board under this subsection (3) shall be deposited into the special fund operating account of the board.

(4) All new barbershops or change of ownership or location of barbershops shall hereafter pay an initial fee of not more than Twenty-five Dollars ($25.00)

in addition to all other fees required before beginning business. The fee shall not be transferable upon change of ownership or location.

(5) All licensees shall notify the State Board of Barber Examiners of the location of the barbershop at which they are employed.

SOURCES: Codes, 1942, § 8739.5; Laws, 1960, ch. 378, § 5; Laws, 1968, ch. 444, § 4; Laws, 1974, ch. 540, § 3; Laws, 1981, ch. 427, § 4; Laws, 1983, ch. 489, § 17; Laws, 1990, ch. 521, § 3; reenacted, Laws, 1991, ch. 508, § 18; Laws, 1995, ch. 359, § 5; reenacted and amended, Laws, 1997, ch. 511, § 18; reenacted and amended, Laws, 2002, ch. 558, § 17; reenacted without change, Laws, 2004, ch. 309, § 18; reenacted without change, Laws, 2008, ch. 303, § 18; Laws, 2010, ch. 477, § 9; reenacted without change, Laws, 2011, ch. 322, § 19, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

§ 73-5-35. Barber school licenses; fees [Repealed effective July 1, 2020].

All barber schools operated in this state shall pay an annual license fee of One Hundred Dollars ($100.00) and the same fee shall be required for renewal of the license to each such school on July 1 of each year. A fee of not more than Twenty-five Dollars ($25.00) shall be required for restoration of an expired license that has been expired for a period of at least thirty (30) days of the renewal date.

The license to operate those schools shall be issued by the Board of Barber Examiners after approval by the board. This license shall not be transferable for any cause and must be renewed annually.

All barber schools operated in this state shall be under the direct supervision of a registered barber instructor at all times.

SOURCES: Codes, 1942, § 8739.9; Laws, 1968, ch. 444, § 5; Laws, 1983, ch. 489, § 18; Laws, 1985, ch. 341, § 7; Laws, 1990, ch. 521, § 4; reenacted, Laws, 1991, ch. 508, § 19; reenacted without change, Laws, 1997, ch. 511, § 19; reenacted and amended, Laws, 2002, ch. 558, § 18; reenacted without change, Laws, 2004, ch. 309, § 19; reenacted without change, Laws, 2008, ch. 303, § 19; reenacted without change, Laws, 2011, ch. 322, § 20, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — Qualifications for certificate of registration as barber instructor, see § 73-5-8.

§ 73-5-37. Annual renewals [Repealed effective July 1, 2020].

Except as provided in Section 33-1-39, every registered barber and barber instructor who continues in active practice or service shall annually on or before the anniversary date of the issuance of his certificate of registration renew the certificate by paying the required fee and meeting all applicable requirements of the State Board of Health. Every certificate of registration which has not been renewed within thirty (30) days of its anniversary date shall expire. A registered barber or barber instructor whose certificate of registration has expired may have his certificate restored immediately upon payment of the renewal fee plus the required restoration fee.

SOURCES: Codes, 1942, § 8740; Laws, 1932, ch. 118; Laws, 1982, ch. 450, § 10; reenacted, Laws, 1983, ch. 489, § 19; Laws, 1985, ch. 341, § 8; reenacted, Laws, 1991, ch. 508, § 20; reenacted without change, Laws, 1997, ch. 511, § 20; reenacted without change, Laws, 2002, ch. 558, § 19; reenacted without change, Laws, 2004, ch. 309, § 20; Laws, 2007, ch. 309, § 6; reenacted without change, Laws, 2008, ch. 303, § 20; reenacted without change, Laws, 2011, ch. 322, § 21, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the last sentence. Deleted the "s" at the end of the word "instructors" so that "A registered barber or barber instructors whose certificate" reads as "A registered barber or barber instructor whose certificate." The Joint Committee ratified the correction at its August 5, 2008 meeting.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — Qualifications for certificate of registration as barber instructor, see § 73-5-8.

RESEARCH REFERENCES

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

CJS. 53 C.J.S., Licenses §§ 80, 82, 84-86, 88, 91.

§ 73-5-39. What constitutes practice of barbering [Repealed effective July 1, 2020].

Any one (1) or any combination of the following practices (when done upon the upper part of the human body for cosmetic purposes and not for the treatment of diseases, or physical or mental ailment, and when done for payment either directly or indirectly, or without payment, for the public generally) constitutes the practice of barbering:

Shaving, trimming the beard or cutting the hair by use of any electric instruments, razors or shears;

Giving facial or scalp massages or treatments with oils, creams, lotions or other preparations, either by hand or mechanical devices;

Singeing, shampooing, coloring or dyeing of the hair or beard, or any chemical services as pertains to hair perms, hair color or straightening;

Applying cosmetic preparations, antiseptics, powders, clays or lotions to scalp, face, neck or upper part of the body.

SOURCES: Codes, 1930, § 3849; 1942, § 8741; Laws, 1930, ch. 131; Laws, 1932, ch. 118; reenacted, Laws, 1983, ch. 489, § 20; reenacted, Laws, 1991, ch. 508, § 21; reenacted and amended, Laws, 1997, ch. 511, § 21; reenacted without change, Laws, 2002, ch. 558, § 20; reenacted without change, Laws, 2004, ch. 309, § 21; reenacted without change, Laws, 2008, ch. 303, § 21; Laws,

2010, ch. 477, § 10; reenacted without change, Laws, 2011, ch. 322, § 22, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.
Cross References — Cosmetologists generally, see §§ 73-7-1 et seq.

RESEARCH REFERENCES

ALR. Liability of barber, beauty shop or specialist, barber college, or school of beauty culture, for injury to patron. 14 A.L.R.2d 860.

Applicability of res ipsa loquitur doctrine in action for injury to patron of beauty salon. 93 A.L.R.3d 897.

Liability of cosmetology school for injury to patron. 81 A.L.R.4th 444.

Products liability: hair straighteners and relaxants. 84 A.L.R.4th 1090.

Products liability: Recovery for injury or death resulting from intentional inhalation of product's fumes or vapors to produce intoxicating or similar effect. 50 A.L.R.5th 275.

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 1, 2 et seq.

§ 73-5-41. Exemptions [Repealed effective July 1, 2020].

The following persons are exempt from the provisions of this chapter, wholly in the proper discharge of their professional duties, to wit:

Persons authorized by the law of Mississippi to practice medicine and surgery.

Commissioned medical or surgical officers of the United States Army, Navy or Marine hospital service.

Registered nurses.

Cosmetologists, and nothing in this chapter shall affect the jurisdiction of the State Board of Cosmetology.

The provision of this section shall not be construed to authorize any of the persons exempted to shave, trim the beard, or cut the hair of any person, or perform any other act that constitutes barbering, for cosmetic purposes, with the exception of persons licensed by the State Board of Cosmetology.

SOURCES: Codes, 1930, § 3851; 1942, § 8742; Laws, 1930, ch. 131; Laws, 1932, ch. 118; Laws, 1938, ch. 176; reenacted, Laws, 1983, ch. 489, § 21; reenacted, Laws, 1991, ch. 508, § 22; reenacted and amended, Laws, 1997, ch. 511, § 22; reenacted without change, Laws, 2002, ch. 558, § 21; reenacted without change, Laws, 2004, ch. 309, § 22; reenacted without change, Laws, 2008, ch. 303, § 22; reenacted without change, Laws, 2011, ch. 322, § 23, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.
Cross References — What constitutes practice of barbering, see § 73-5-39.
Powers of the State Board of Cosmetology, see § 73-7-7.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statute or ordinance regulating beauty shop or beauty culture schools. 56 A.L.R.2d 879.

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

§ 73-5-43. Certain acts prohibited [Repealed effective July 1, 2020].

Each of the following constitutes a misdemeanor, punishable in any court of competent jurisdiction, upon conviction thereof, by a fine of not less than Twenty-five Dollars ($25.00) nor more than One Thousand Dollars ($1,000.00):

The violation of any of the provisions of Sections 73-5-9, 73-5-33 and 73-5-23; or

Any acts or threats of violence against any members or employees of the board; or

Obtaining or attempting to obtain a certificate of registration for money other than the required fee, or any other thing of value, or by fraudulent misrepresentation; or

Practicing or attempting to practice by fraudulent misrepresentations; or

The willful failure to display a certificate of registration as required by Section 73-5-23; or

The use of any room or place for barbering which is also used for residential or business purpose (except for the sale of hair tonics, lotions, creams, cutlery, toilet articles, cigars, tobacco and such commodities as are used or sold in a barbershop) unless a substantial partition of ceiling height separates the portion used for the residence or business purpose from that in which such practice of barbering is carried on.

SOURCES: Codes, 1930, § 3862; 1942, § 8744; Laws, 1930, ch. 131; Laws, 1932, ch. 118; Laws, 1983, ch. 489, § 22; reenacted, Laws, 1991, ch. 508, § 23; reenacted without change, Laws, 1997, ch. 511, § 23; reenacted without change, Laws, 2002, ch. 558, § 22; reenacted without change, Laws, 2004, ch. 309, § 23; reenacted without change, Laws, 2008, ch. 303, § 23; Laws, 2010, ch. 477, § 11; reenacted without change, Laws, 2011, ch. 322, § 24, eff from and after July 1, 2011.

Editor's Note — See § 73-5-45 for the date for repeal of this section.

Cross References — Refusal and/or revocation of a certificate for offenses set forth in this section, see § 73-5-25.

Injunctions to restrain unlawful practice of profession, see § 73-51-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Validity of statute establishing or authorizing minimum price schedules for barbers. 54 A.L.R.3d 916.

§ 73-5-45. Repeal of Sections 73-5-1 through 73-5-43.

Sections 73-5-1 through 73-5-43, Mississippi Code of 1972, which create the State Board of Barber Examiners and prescribe its duties and powers, shall stand repealed as of July 1, 2020.

SOURCES: Laws, 1979, ch. 301, § 21; Laws, 1979, ch. 357, § 7; Laws, 1983, ch. 489, § 23; Laws, 1991, ch. 508 § 24; Laws, 1997, ch. 511, § 24; reenacted and amended, Laws, 2002, ch. 558, § 23; Laws, 2004, ch. 309, § 24; Laws, 2008, ch. 303, § 24; Laws, 2011, ch. 322, § 1; Laws, 2016, ch. 308, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amemdment extended the date of the repealer for §§ 73-5-1 through 73-5-43 by substituting "July 1, 2020" for "July 1, 2016."

CHAPTER 6

Chiropractors

Sec.
73-6-1. Practice of chiropractic; definitions; qualifications; limitations on practice; standard of care; animal chiropractic treatment [Repealed effective July 1, 2021].
73-6-3. State board of chiropractic examiners; creation; members; terms; qualifications; removal [Repealed effective July 1, 2021].
73-6-5. Officers of board; meetings; enactment of rules and regulations; authority of board to establish education requirements; annual fee for certification of certain chiropractic assistants; provision of certain services by chiropractic assistants authorized under certain circumstances [Repealed effective July 1, 2021].
73-6-7. Bond of executive secretary; state board of chiropractic examiners fund [Repealed effective July 1, 2021].
73-6-9. Compensation and expenses of board members and executive secretary [Repealed effective July 1, 2021].
73-6-11. Seal; records; reports [Repealed effective July 1, 2021].
73-6-13. Qualifications of applicants for license; examination [Repealed effective July 1, 2021].
73-6-14. Board authorized to establish preceptorship and extern program for graduating chiropractic students; issuance of temporary licenses for nonresident chiropractors traveling with entities; issuance of emergency licenses for nonresident chiropractors to practice in place of resident licensee [Repealed effective July 1, 2021].
73-6-15. Application; reexamination; issuance of license [Repealed effective July 1, 2021].
73-6-17. Fees for application, examination and issuance of certificates; biennial registration requirements [Repealed effective July 1, 2021].
73-6-18. Record keeping standards for chiropractors and chiropractic assistants [Repealed effective July 1, 2021].
73-6-19. Grounds upon which license may be refused, cancelled, revoked, or suspended; proceedings; disciplinary action; monetary penalty in lieu of revocation, suspension or cancellation [Repealed effective July 1, 2021; paragraph (1)(q) repealed effective July 1, 2020].
73-6-21. Repealed.
73-6-23. No additional rights conferred upon certificate holders [Repealed effective July 1, 2021].
73-6-25. Prohibited conduct [Repealed effective July 1, 2021].
73-6-26. Unlawful for persons to claim that they perform chiropractic services without a valid license to practice [Repealed effective July 1, 2021].
73-6-27. Exemption from examination [Repealed effective July 1, 2021].
73-6-29. Offenses; injunctive relief [Repealed effective July 1, 2021].
73-6-31. Valid license required to engage in practice of chiropractic [Repealed effective July 1, 2021].
73-6-33. Repeal of Sections 73-6-1 through 73-6-31.
73-6-34. Requirements, guidelines, and qualifications for chiropractor doing insurance claims reviews and/or independent examinations.

§ 73-6-1. Practice of chiropractic; definitions; qualifications; limitations on practice; standard of care; animal chiropractic treatment [Repealed effective July 1, 2021].

(1) The practice of chiropractic involves the analysis of any interference with normal nerve transmission and expression, and the procedure preparatory to and complementary to the correction thereof, by adjustment and/or manipulation of the articulations of the vertebral column and for the restoration and maintenance of health without the use of drugs or surgery.

(2) The chiropractic adjustment and/or manipulation of the articulations of the human body may include manual adjustments and/or manipulations and adjustments and/or manipulations by means of electrical and/or mechanical manual devices. Chiropractors licensed under this chapter may also use in conjunction with adjustments and/or manipulations of the spinal structures electrical therapeutic modalities which induce heat or electrical current beneath the skin, including therapeutic ultrasound, galvanism, diathermy and electromuscular stimulation and other procedures taught by a chiropractic college approved by the Council on Chiropractic Education, its successor or an equivalent accrediting agency.

(3) Chiropractors licensed under this chapter may utilize those electric therapeutic modalities described in subsection (2) of this section only after the chiropractor has completed a course of study containing a minimum of one hundred twenty (120) hours of instruction in the proper utilization of those procedures in accordance with the guidelines set forth by the Council on Chiropractic Education, its successor or an equivalent accrediting agency, and is qualified and so certified in that proper utilization.

(4) Chiropractors shall not prescribe or administer medicine to patients, perform surgery, practice obstetrics or osteopathy. Chiropractors shall be authorized to recommend, dispense or sell vitamins or food supplements.

(5) Chiropractors shall not use venipuncture, capillary puncture, acupuncture or any other technique which is invasive of the human body either by penetrating the skin or through any of the orifices of the body or through the use of colonics.

(6) A person professing to practice chiropractic for compensation must bring to the exercise of that person's profession a reasonable degree of care and skill. Any injury resulting from a want of such care and skill shall be a tort for which a recovery may be had. If a chiropractor performs upon a patient any act authorized to be performed under this chapter but which act also constitutes a standard procedure of the practice of medicine including, but not limited to, the use of modalities such as those described in subsection (2) of this section and x-rays, under similar circumstances, the chiropractor shall be held to the same standard of care as would licensed doctors of medicine who are qualified to and who actually perform those acts under similar conditions and like circumstances.

(7) Chiropractors licensed under this chapter are authorized to refer patients to licensed physical therapists for treatment.

(8) Doctors of chiropractic medicine may respond on a referral basis and under the direct and immediate supervision of a Mississippi licensed veterinarian to calls for animals requiring their professional services provided the chiropractor has a current license from the State Board of Chiropractic Examiners and the chiropractor has completed a Mississippi Board of Veterinary Medicine approved animal chiropractic course.

SOURCES: Laws, 1973, ch. 501, § 1; reenacted, Laws, 1983, ch. 448, § 1; Laws, 1989, ch. 387, § 1; reenacted, Laws, 1991, ch. 350, § 1; reenacted and amended, Laws, 1997, ch. 428, § 1; Laws, 1997, ch. 581, § 3; reenacted without change, Laws, 2001, ch. 409, § 1; Laws, 2003, ch. 400, § 1; reenacted without change, Laws, 2006, ch. 515, § 1; reenacted and amended, Laws, 2011, ch. 323, § 1, eff from and after June 30, 2011.

Joint Legislative Committee Note — Section 1 of ch. 428, Laws of 1997, reenacted and amended this section, effective June 30, 1997. Section 3 of ch. 581, Laws of 1997, effective July 1, 1997, also amended this section. As set out above, this section reflects the language of Section 3 of ch. 581, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Note — For the repeal date of this section, see § 73-6-33.

Cross References — Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Mississippi Veterinary practice law generally, see §§ 73-39-51 et seq.

Insured's right to reimbursement for services within lawful scope of practice of licensed chiropractor, see § 83-41-215.

JUDICIAL DECISIONS

1. In general.

The field of chiropractory is one within which expert opinions may generally be given. Mississippi Farm Bureau Mut. Ins. Co. v. Garrett, 487 So. 2d 1320 (Miss. 1986).

Use of microwave diathermy, electrical muscle stimulators and ultra sound equipment by chiropractor constituted practice of medicine without a license; nor was use of such modalities protected under chiropractic licensing statute where it made no express provision therefor and where it seemed likely that the legislature, had it intended to allow the use of such hazardous modalities by chiropractors, would have provided for substantially the same safeguards that underlie the use of X-ray machines by chiropractors; the recommending or prescribing of vitamins by a chiropractor also constituted the unlicensed practice of medicine where, by definition, the use of drugs was prohibited to chiropractors and where vitamins, which are a medicine, fell within the statutory definition of the term "drugs." Norville v. Mississippi State Medical Ass'n, 364 So. 2d 1084 (Miss. 1978).

RESEARCH REFERENCES

ALR. Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs. 8 A.L.R.4th 1056.

Scope of practice of chiropractic. 16 A.L.R.4th 58.

Liability of chiropractors and other drugless practitioners for medical malpractice. 77 A.L.R.4th 273.

§ 73-6-3. State board of chiropractic examiners; creation; members; terms; qualifications; removal [Repealed effective July 1, 2021].

There is hereby created a State Board of Chiropractic Examiners. This board shall consist of six (6) members; one (1) of whom shall be the executive officer of the State Board of Health, or his designee, and one (1) from each congressional district as presently constituted, to be appointed by the Governor with the advice and consent of the Senate. Each member except the executive officer of the State Board of Health shall be a qualified elector of the State of Mississippi having been continuously engaged in the practice of chiropractic in Mississippi for at least five (5) years prior to appointment. No member shall be a stockholder in or member of the faculty or board of trustees of any school of chiropractic. Each member appointed to the board shall serve for five (5) years and until his successor is appointed and qualified; except the terms of the initial members appointed by the Governor shall expire one (1) each for five (5) years or until their successors are appointed and qualified. The members of the board as constituted on January 1, 2011, whose terms have not expired shall serve the balance of their terms, after which time the membership of the board shall be appointed as follows: There shall be appointed one (1) member of the board from each of the four (4) Mississippi congressional districts as they currently exist, and one (1) from the state at large, and the Governor shall make appointments from the congressional district having the smallest number of board members until the membership includes one (1) member from each district as required. Vacancies on the board, except for the Executive Officer of the State Board of Health, or his designee, shall be filled by appointment of the Governor only for unexpired terms. Any member who shall not attend two (2) consecutive meetings of the board shall be subject to removal by the Governor. The chairman of the board shall notify the Governor in writing when any such member has failed to attend two (2) consecutive regular meetings.

SOURCES: Laws, 1973, ch. 501, § 2; reenacted and amended, Laws, 1983, ch. 448, § 2; Laws, 1985, ch. 473, § 1; reenacted, Laws, 1991, ch. 350, § 2; reenacted without change, Laws, 1997, ch. 428, § 2; reenacted without change, Laws, 2001, ch. 409, § 2; Laws, 2003, ch. 346, § 1; reenacted without change, Laws, 2006, ch. 515, § 2; reenacted and amended, Laws, 2011, ch. 323, § 2, eff from and after June 30, 2011.

Editor's Note — For the repeal date of this section, see § 73-6-33.
Cross References — State Board of Health generally, see §§ 41-3-1 et seq.

JUDICIAL DECISIONS

1. In general.

The statutory requirement that no member of the board of chiropractic examiners can be a stockholder in or member of the faculty or board of trustees of any school of chiropractic was not violated by a member who was listed in the bulletin of a chiropractic college as a member of its board of trustees and a visiting lecturer where, inter alia, he declined the invitation to serve, he never attended any meetings of the board and did not participate as a member of the faculty or deliver any lectures to classes; the introduction in evidence of an opinion by the attorney general which was rendered after the filing of this action, although contrary to statute, was harmless error. State ex rel. Smith v. Morgan, 361 So. 2d 338 (Miss. 1978).

§ 73-6-5. Officers of board; meetings; enactment of rules and regulations; authority of board to establish education requirements; annual fee for certification of certain chiropractic assistants; provision of certain services by chiropractic assistants authorized under certain circumstances [Repealed effective July 1, 2021].

(1) The State Board of Chiropractic Examiners shall select by election from its membership a chairman and vice chairman who shall hold their respective offices for a period of one (1) year. A majority of the members of the board may select an executive secretary; and may hire such other employees, including an attorney, needed to implement the provisions of this chapter. The board shall hold regular meetings for examination beginning on the second week of January and July of each year; and may hold additional meetings at such times and places as it deems necessary, but not to exceed twelve (12) times during its initial calendar year and at least four (4) times during any subsequent calendar year but may hold meetings at such times and places as it deems necessary. The July meeting shall be held in the Jackson Metropolitan area. A majority of the board shall constitute a quorum, and the concurrence of a majority of the members of the board shall be required to grant or revoke a license. The board shall make such rules and regulations as is necessary to carry out the provisions of this chapter; however, the board shall not adopt any rule or regulation or impose any requirement regarding the licensing of chiropractors that conflicts with the prohibitions in Section 73-49-3. A copy of these rules and regulations as well as all changes thereto shall, upon passage, be sent to all practitioners licensed under this chapter.

(2) The State Board of Chiropractic Examiners shall be authorized to certify to the State Department of Health those chiropractic assistants who are exempt from registration under Section 41-58-3(7)(d) as having completed continuing education requirements and charge a fee of not more than Fifty Dollars ($50.00) annually to each individual whom the board certifies, as required under Section 41-58-5(4)(f). The board shall be authorized to establish educational qualifications and continuing education requirements for chiropractic assistants that participate in direct patient care. This section does not prohibit a chiropractic assistant from rendering ancillary services or proce-

dures used in chiropractic practice, other than the adjustments or manipulative techniques, if those services are rendered under the supervision and control of a licensed chiropractor as long as the chiropractic assistant has successfully completed a training program recognized by the board. "Supervision and control" may not be construed as requiring the personal presence of the supervising and controlling chiropractor at the place where those services are rendered, unless physical presence is necessary to provide patient care of the same quality as provided by the chiropractor. This section does not prohibit a chiropractor from delegating to a chiropractic assistant certain activities relating to patient care and treatment when those activities are under supervision or direct order of the chiropractor. The chiropractor delegating those activities to an employee, to a program graduate, or to a participant in an approved training program is legally liable for those activities performed by such a chiropractic assistant and that chiropractic assistant is considered to be the chiropractor's agent. The board shall charge a fee not to exceed Fifty Dollars ($50.00) annually for this certification and annual renewal. Likewise, a late fee of One Hundred Dollars ($100.00) shall be charged on all chiropractic assistants and chiropractic radiological technologists not renewing on or before July 1 of each year. Chiropractic radiological technologists are not exempt from these continuing education requirements.

SOURCES: Laws, 1973, ch. 501, § 3; reenacted, Laws, 1983, ch. 448, § 3; reenacted, Laws, 1991, ch. 350, § 3; reenacted and amended, Laws, 1997, ch. 428, § 3; Laws, 2000, ch. 367, § 2; reenacted without change, Laws, 2001, ch. 409, § 3; Laws, 2001, ch. 549, § 21; reenacted without change, Laws, 2006, ch. 515, § 3; reenacted and amended, Laws, 2011, ch. 323, § 3; Laws, 2015, ch. 461, § 2, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 3 of ch. 409, Laws of 2001, effective from and after July 1, 2001, amended this section. Section 21 of ch. 549, Laws of 2001, effective from and after July 2, 2001, also amended this section. As set out above, this section reflects the language of Section 21 of ch. 549, Laws of 2001, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the next-to-last sentence of (2). The words "assistance" and "technologist" were changed to "assistants" and "technologists," respectively, so that "...shall be charged on all chiropractic assistance and chiropractic radiological technologist..." reads as "...shall be charged on all chiropractic assistants and chiropractic radiological technologists...". The Joint Committee ratified the correction at its August 5, 2008 meeting.

Editor's Note — For the repeal date of this section, see § 73-6-33.

Cross References — Board to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health care providers, see § 41-34-3.

Requirement that Board establish procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

§ 73-6-7. Bond of executive secretary; state board of chiropractic examiners fund [Repealed effective July 1, 2021].

Before entering upon the discharge of the duties of his office, the Executive Secretary of the State Board of Chiropractic Examiners shall present a bond, approved by the board, to the state in the sum of Ten Thousand Dollars ($10,000.00), conditioned upon the faithful discharge of the duties of his office. The premium for such bond shall be paid from the funds paid into the State Treasury by the secretary of the board. Such bond, with the approval of the board and oath of office endorsed thereon, shall be deposited with the Secretary of State.

Each month, monies received by the secretary of the board shall be paid by him into the State Treasury and deposited in a fund to be known as the "State Board of Chiropractic Examiners Fund" for the use of the board in carrying out the provisions of this chapter. The board shall receive no appropriation from any state funds for its support, except from the special fund deposited into the State Treasury by the board.

SOURCES: Laws, 1973, ch. 501, § 4; reenacted, Laws, 1983, ch. 448, § 4; reenacted, Laws, 1991, ch. 350, § 4; reenacted without change, Laws, 1997, ch. 428, § 4; reenacted without change, Laws, 2001, ch. 409, § 4; reenacted without change, Laws, 2006, ch. 515, § 4; reenacted without change, Laws, 2011, ch. 323, § 4, eff from and after June 30, 2011.

Editor's Note — For the repeal date of this section, see § 73-6-33.

§ 73-6-9. Compensation and expenses of board members and executive secretary [Repealed effective July 1, 2021].

Each member of the State Board of Chiropractic Examiners shall receive the per diem authorized under Section 25-3-69, for each day actually discharging his official duties, and shall receive reimbursement for mileage and necessary expense incurred, as provided in Section 25-3-41. The executive secretary shall receive an annual salary to be fixed by the board in addition to reimbursements for necessary expenses incurred in the discharge of his official duties.

The expenses of the board in carrying out the provisions of this chapter shall be paid upon requisitions signed by the chairman and secretary of the board and warrants signed by the State Auditor from the fund in the State Treasury for the use of the board. Said expenses shall not exceed the amount paid into the State Treasury under the provisions of this chapter.

SOURCES: Laws, 1973, ch. 501, § 5; reenacted and amended, Laws, 1983, ch. 448, § 5; reenacted, Laws, 1991, ch. 350, § 5; reenacted without change, Laws, 1997, ch. 428, § 5; reenacted without change, Laws, 2001, ch. 409, § 5; reenacted without change, Laws, 2006, ch. 515, § 5; reenacted without change, Laws, 2011, ch. 323, § 5, eff from and after June 30, 2011.

Editor's Note — For the repeal date of this section, see § 73-6-33.

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 73-6-11. Seal; records; reports [Repealed effective July 1, 2021].

The State Board of Chiropractic Examiners shall adopt an official seal and shall keep a record of its proceedings, persons licensed as chiropractors, and a record of licenses which have been revoked or suspended. The board shall keep on file all examination papers for a period of at least ninety (90) days after each examination. A transcript of an entry in such records, certified by the secretary under the seal of the board, shall be evidence of the facts therein stated. The board shall annually, on or before January 1, make a report to the Governor and Legislature of all its official acts during the preceding year, its receipts and disbursements, and a full and complete report of the conditions of chiropractic in this state.

SOURCES: Laws, 1973, ch. 501, § 6; reenacted, Laws, 1983, ch. 448, § 6; reenacted, Laws, 1991, ch. 350, § 6; reenacted without change, Laws, 1997, ch. 428, § 6; reenacted without change, Laws, 2001, ch. 409, § 6; reenacted without change, Laws, 2006, ch. 515, § 6; reenacted without change, Laws, 2011, ch. 323, § 6, eff from and after June 30, 2011.

Editor's Note — For the repeal date of this section, see § 73-6-33.

§ 73-6-13. Qualifications of applicants for license; examination [Repealed effective July 1, 2021].

(1) Any adult of good moral character who has (a) graduated from a school or college of chiropractic recognized by the State Board of Chiropractic Examiners, preceded by the successful completion of at least two (2) academic years at an accredited institution of higher learning, or accredited junior college, and (b) successfully completed parts 1, 2, 3 and 4 and the physical modality section of the examination prepared by the National Board of Chiropractic Examiners, shall be entitled to take the examination for a license to practice chiropractic in Mississippi. The State Board of Chiropractic Examiners shall keep on file a list of schools or colleges of chiropractic which are so recognized. No chiropractic school shall be approved unless it is recognized and approved by the Council on Chiropractic Education, its successor or an equivalent accrediting agency, offers an accredited course of study of not less than four (4) academic years of at least nine (9) months in length, and requires its graduates to receive not less than forty (40) clock hours of instruction in the operation of x-ray machinery and not less than forty (40) clock hours of instruction in x-ray interpretation and diagnosis.

(2) Except as otherwise provided in this section, the State Board of Health shall prescribe rules and regulations for the operation and use of x-ray machines.

(3) The examination to practice chiropractic used by the board shall consist of testing on the statutes and the rules and regulations regarding the practice of chiropractic in the State of Mississippi.

(4) Reciprocity privileges for a chiropractor from another state shall be granted at the board's option on an individual basis and by a majority vote of the State Board of Chiropractic Examiners to an adult of good moral character who (a) is currently an active competent practitioner for at least eight (8) years and holds an active chiropractic license in another state with no disciplinary proceeding or unresolved complaint pending anywhere at the time a license is to be issued by this state, (b) demonstrates having obtained licensure as a chiropractor in another state under the same education requirements which were equivalent to the education requirements in this state to obtain a chiropractic license at the time the applicant obtained the license in the other state, (c) satisfactorily passes the examination administered by the State Board of Chiropractic Examiners, and (d) meets the requirements of Section 73-6-1(3) pertaining to therapeutic modalities. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 1973, ch. 501, § 7; Laws, 1978, ch. 468, §§ 1, 2; reenacted and amended, Laws, 1983, ch. 448, § 7; Laws, 1991, ch. 350, § 7; reenacted and amended, Laws, 1997, ch. 428, § 7; Laws, 2002, ch. 439, § 1; reenacted and amended, Laws, 2006, ch. 515, § 7; reenacted and amended, Laws, 2011, ch. 323, § 7; Laws, 2013, ch. 350, § 9, eff from and after July 1, 2013.

Editor's Note — Laws of 1978, ch. 468, § 2, provides as follows:

"SECTION 2. The provisions of this act shall not apply to any chiropractor licensed prior to July 1, 1978."

For the repeal date of this section, see § 73-6-33.

Cross References — Board to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health care providers, see § 41-34-3.

Requirement that Board establish procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

JUDICIAL DECISIONS

1. In general.

The field of chiropractory is one within which expert opinions may generally be given. Mississippi Farm Bureau Mut. Ins. Co. v. Garrett, 487 So. 2d 1320 (Miss. 1986).

Use of microwave diathermy, electrical muscle stimulators and ultra sound equipment by chiropractor constituted practice of medicine without a license; nor was use of such modalities protected under chiropractic licensing statute where it made no express provision therefor and where it seemed likely that the legislature, had it intended to allow the use of such hazardous modalities by chiropractors, would have provided for substantially the same safeguards that underlie the use of X-ray machines by chiropractors; the recommending or prescribing of vitamins by a chiropractor also constituted the unlicensed practice of medicine where, by definition, the use of drugs was prohibited to chiropractors and where vitamins, which are a medicine, fell within the statutory definition of the term "drugs." Norville v. Mississippi State Medical Ass'n, 364 So. 2d 1084 (Miss. 1978).

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. Proof of Facts 2d 137, Qualification of Chiropractor as Expert Witness.

§ 73-6-14. Board authorized to establish preceptorship and extern program for graduating chiropractic students; issuance of temporary licenses for nonresident chiropractors traveling with entities; issuance of emergency licenses for nonresident chiropractors to practice in place of resident licensee [Repealed effective July 1, 2021].

(1) The State Board of Chiropractic Examiners is hereby authorized to establish a preceptorship and extern program whereby chiropractic students enrolled in their last year at a board-approved chiropractic college accredited by the Council on Chiropractic Education, its successor or an equivalent accrediting agency, and recent chiropractic graduates of such schools may be issued a limited license to practice chiropractic in the State of Mississippi under the direct on-premises supervision of a sponsoring licensed chiropractor, and in the case of chiropractic students, also under the general supervision of the student's school. The State Board of Chiropractic Examiners shall prohibit the use of more than one (1) such limited license student or graduate to one (1) sponsor licensed to practice chiropractic. The State Board of Chiropractic Examiners is empowered to establish rules and regulations for the implementation of this subsection (1), including, but not limited to, providing academic, professional and character requirements for eligible participants, defining the permitted scope of practice of the limited licensee, and prescribing fees for participation.

(2) The State Board of Chiropractic Examiners is hereby authorized to establish a Travel to Treat temporary license whereby nonresident chiropractors traveling with nonresident entities, including, but not limited to sports teams, will be able to practice chiropractic on members of their entities while in the State of Mississippi. The board is empowered to establish rules and regulations for the implementation of this subsection (2), including, but not limited to, providing professional requirements for eligible participants, defining the permitted scope of practice of the traveling chiropractors, and prescribing fees for participation.

(3) The State Board of Chiropractic Examiners is hereby authorized to establish an emergency license to nonresident chiropractors to practice in the place of a chiropractor licensed in the State of Mississippi. Such emergency license shall remain in force for a period not to exceed ninety (90) days, unless extended for an additional period of ninety (90) days by the board or until the

licensed resident chiropractor is able to resume his practice. The board is empowered to establish rules and regulations for the implementation of this subsection (3), including, but not limited to, providing professional requirements for eligible participants, defining the scope of practice for emergency licensees, and prescribing fees for participation.

SOURCES: Laws, 2003, ch. 344, § 1; Laws, 2011, ch. 323, § 8, eff from and after June 30, 2011.

Editor's Note — For the repeal date of this section, see § 73-6-33.

Section 8 of Chapter 323, Laws of 2011, enacted a new Section 73-6-14. The section already exists, however, and the direction to codify Section 8 of Chapter 323 was an error. At the direction of the Co-Counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, Section 8 of Chapter 323 is being treated as an amendment to the existing Section 73-6-14 as consistent with legislative intent.

§ 73-6-15. Application; reexamination; issuance of license [Repealed effective July 1, 2021].

Every applicant shall file with the secretary of the board an application, verified by oath, setting forth the facts which entitle the applicant to examination under the provisions of this chapter. The State Board of Chiropractic Examiners shall hold at least two (2) examinations each year. In case of failing to pass such examination, the applicant, after the expiration of six (6) months and within two (2) years, shall have the privilege of taking a second examination by the board with the payment of an additional fee equal to that charged the State Board of Chiropractors by the National Board of Chiropractic Examiners. An applicant who fails the examination twice shall not be permitted to retake the examination until completion of further course of study to be outlined by the board and payment of the fee for further examination. Every applicant who passed the examination and otherwise complies with the provisions of this chapter shall receive from the board, under its seal, a certificate of licensure which entitles him to practice chiropractic in this state; however, such certificate does not in any way qualify a chiropractor to make application to practice on the medical staff of any hospital licensed by the State Department of Health. Nothing in this chapter may prevent a chiropractor from making application to any hospital for chiropractic staff privileges or as an allied health provider as outlined under the Minimum Standards for the Operation of Hospitals. Such certificate shall be duly registered in a record book which shall be properly kept by the secretary of the board and which shall be open to public inspection. A duly certified copy of said record shall be competent evidence in all courts of this state to establish licensure.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Laws, 1973, ch. 501, § 8; reenacted and amended, Laws, 1983, ch. 448, § 8; Laws, 1988, ch. 409; Laws, 1991, ch. 350, § 8; reenacted and amended, Laws, 1997, ch. 428, § 8; Laws, 1997, ch. 588, § 28; reenacted without change, Laws, 2001, ch. 409, § 8; reenacted without change, Laws, 2006, ch. 515, § 8; reenacted without change, Laws, 2011, ch. 323, § 9, eff from and after June 30, 2011.

Joint Legislative Committee Note — Section 8 of ch. 428, Laws of 1997, reenacted and amended this section, effective June 30, 1997. Section 28 of ch. 588, Laws of 1997, effective July 1, 1997, also amended this section. As set out above, this section reflects the language of Section 28 of ch. 588, Law of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision, and Publication corrected a typographical error in Section 28 of ch. 588, Laws of 1997. In the sixth sentence of the first paragraph, the word “provided” was changed to “provider.” The Joint Committee ratified the correction at the May 8, 1997 meeting of the Committee.

Editor’s Note — Laws of 1997, ch. 588, § 150, provides as follows:

“SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional.”

For the repeal date of this section, see § 73-6-33.

Cross References — Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Fees for application, examination and issuance of certificates, see § 73-6-17.

Grounds for refusal to issue or cancellation, revocation or suspension of license, see § 73-6-19.

RESEARCH REFERENCES

Am Jur. 45 Am. Jur. Proof of Facts 2d 137, Qualification of Chiropractor as Expert Witness.

§ 73-6-17. Fees for application, examination and issuance of certificates; biennial registration requirements [Repealed effective July 1, 2021].

The State Board of Chiropractic Examiners shall charge the following fees for application, examination and issuance of certificates: application, One Hundred Dollars ($100.00); examination and issuance of certificate, Two Hundred Dollars ($200.00) for all applicants; provided, however, that resident and nonresident applicants shall have first successfully completed parts 1, 2, 3 and 4 and the physical modality section of the examination prepared by the National Board of Chiropractic Examiners.

Except as provided in Section 33-1-39, every registered chiropractor in order to continue the practice of chiropractic shall pay annually to the secretary of the board a registration renewal fee of not more than Three Hundred Dollars ($300.00) and, in addition to such renewal fee, shall be required to file with the secretary of the board a certificate, certified by a state chiropractic board and state chiropractic association, verifying his attendance at a course of study approved by the board consisting of not less than twelve (12) hours of instruction in the latest developments in the practice of chiropractic of which at least three (3) hours shall be instruction in the subject of risk management. Provided, that any chiropractor who has reached the age of seventy-five (75) years and is not participating in an active practice shall not be required to pay said renewal fee or submit the twelve (12) hours of continuing education. Any chiropractor who has received a certificate of licensure in this state under the provisions of Section 73-6-13(4) shall be in good standing in the state of his original licensure in order to renew his certificate in this state, and the board shall refuse to renew the certificate of any such chiropractor whose license has been suspended or revoked for cause in the state of his original licensure. In case of failure to pay the renewal fee, the board may revoke such certificate after giving sixty (60) days' notice to the holder who, within such period, may renew such certificate upon payment of the delinquent fee with a special processing charge of not more than Three Hundred Dollars ($300.00). Lack of participation in active practice for a period of less than two (2) years, except when a doctor is in active military duty, shall not deprive the holder of the right to renew such certificate, without examination, upon the payment of all lapsed fees and proof of required continuing education hours.

SOURCES: Laws, 1973, ch. 501, § 9; Laws, 1976, ch. 340; reenacted and amended, Laws, 1983, ch. 448, § 9; Laws, 1990, ch. 505, § 1; Laws, 1991, ch. 350, § 9; reenacted and amended, Laws, 1997, ch. 428, § 9; Laws, 2000, ch. 367, § 1; reenacted without change, Laws, 2001, ch. 409, § 9; reenacted without change, Laws, 2006, ch. 515, § 9; Laws, 2007, ch. 309, § 7; reenacted and amended, Laws, 2011, ch. 323, § 10, eff from and after June 30, 2011.

Editor's Note — For the repeal date of this section, see § 73-6-33.

Cross References — Fee charged applicant who is exempt from examination requirement, see § 73-6-27.

§ 73-6-18. Record keeping standards for chiropractors and chiropractic assistants [Repealed effective July 1, 2021].

These standards apply to all licensed chiropractors and chiropractic assistants. These standards also apply to those consultations and examinations advertised as a reduced fee or free (no charge) service:

(a) The chiropractor shall maintain records for patients which accurately, legibly and completely reflect the evaluation and treatment of the patient.

(b) All patient records shall include patient history, symptomatology, examination, diagnosis, prognosis and treatment. If abbreviations or symbols are used in daily record keeping, a key must be provided.

(c) In the event that the board takes disciplinary action against a chiropractor for any reason, these minimum record keeping standards will apply. It is understood that these procedures are the accepted standard(s) and anything less than this shall be considered unprofessional conduct in the practice of chiropractic.

SOURCES: Laws, 1999, ch. 406, § 1; Laws, 2001, ch. 409, § 10; reenacted without change, Laws, 2011, ch. 323, § 11, eff from and after June 30, 2011.

Editor's Note — For the repeal date of this section, see § 73-6-33.

Cross References — Failure of chiropractor to follow record keeping requirements prescribed in this section constitutes unprofessional conduct, see § 73-6-19.

§ 73-6-19. Grounds upon which license may be refused, cancelled, revoked, or suspended; proceedings; disciplinary action; monetary penalty in lieu of revocation, suspension or cancellation [Repealed effective July 1, 2021; paragraph (1)(q) repealed effective July 1, 2020].

(1) The board shall refuse to grant a certificate of licensure to any applicant or may cancel, revoke or suspend the certificate upon the finding of any of the following facts regarding the applicant or licensed practitioner:

(a) Failure to comply with the rules and regulations adopted by the State Board of Chiropractic Examiners;

(b) Violation of any of the provisions of this chapter or any of the rules and regulations of the State Board of Health pursuant to this chapter with regard to the operation and use of x-rays;

(c) Fraud or deceit in obtaining a license;

(d) Addiction to the use of alcohol, narcotic drugs, or anything which would seriously interfere with the competent performance of his professional duties;

(e) Conviction by a court of competent jurisdiction of a felony, other than manslaughter or any violation of the United States Internal Revenue Code;

(f) Unprofessional and unethical conduct;

(g) Contraction of a contagious disease which may be carried for a prolonged period;

(h) Failure to report to the Mississippi Department of Human Services or the county attorney any case wherein there are reasonable grounds to believe that a child or vulnerable adult has been abused by its parent or person responsible for such person's welfare;

(i) Advising a patient to use drugs, prescribing or providing drugs for a patient, or advising a patient not to use a drug prescribed by a licensed physician or dentist;

(j) Professional incompetency in the practice of chiropractic;

(k) Having disciplinary action taken by his peers within any professional chiropractic association or society;

(*l*) Offering to accept or accepting payment for services rendered by assignment from any third-party payor after offering to accept or accepting whatever the third-party payor covers as payment in full, if the effect of the offering or acceptance is to eliminate or give the impression of eliminating the need for payment by an insured of any required deductions applicable in the policy of the insured;

(m) Associating his practice with any chiropractor who does not hold a valid chiropractic license in Mississippi, or teach chiropractic manipulation to nonqualified persons under Section 73-6-13;

(n) Failure to make payment on chiropractic student loans;

(o) Failure to follow record keeping requirements prescribed in Section 73-6-18;

(p) If the practitioner is certified to provide animal chiropractic treatment, failure to follow guidelines approved by the Mississippi Board of Veterinary Medicine; or

(q) Violation(s) of the provisions of Sections 41-121-1 through 41-121-9 relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2020.

(2) Any holder of such certificate or any applicant therefor against whom is preferred any of the designated charges shall be furnished a copy of the complaint and shall receive a formal hearing in Jackson, Mississippi, before the board, at which time he may be represented by counsel and examine witnesses. The board is authorized to administer oaths as may be necessary for the proper conduct of any such hearing. In addition, the board is authorized and empowered to issue subpoenas for the attendance of witnesses and the production of books and papers. The process issued by the board shall extend to all parts of the state. Where in any proceeding before the board any witness shall fail or refuse to attend upon subpoena issued by the board, shall refuse to testify, or shall refuse to produce any books and papers, the production of which is called for by the subpoena, the attendance of such witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(3) In addition to any other investigators the board employs, the board shall appoint one or more licensed chiropractors to act for the board in investigating the conduct relating to the competency of a chiropractor, whenever disciplinary action is being considered for professional incompetence and unprofessional conduct.

(4) Whenever the board finds any person unqualified to practice chiropractic because of any of the grounds set forth in subsection (1) of this section, after a hearing has been conducted as prescribed by this section, the board may enter an order imposing one or more of the following:

(a) Deny his application for a license or other authorization to practice chiropractic;

(b) Administer a public or private reprimand;

(c) Suspend, limit or restrict his license or other authorization to practice chiropractic for up to five (5) years;

(d) Revoke or cancel his license or other authorization to practice chiropractic;

(e) Require him to submit to care, counseling or treatment by physicians or chiropractors designated by the board, as a condition for initial, continued or renewal of licensure or other authorization to practice chiropractic;

(f) Require him to participate in a program of education prescribed by the board; or

(g) Require him to practice under the direction of a chiropractor designated by the board for a specified period of time.

(5) Any person whose application for a license or whose license to practice chiropractic has been cancelled, revoked or suspended by the board within thirty (30) days from the date of such final decision shall have the right of a de novo appeal to the circuit court of his county of residence or the Circuit Court of the First Judicial District of Hinds County, Mississippi. If there is an appeal, such appeal may, in the discretion of and on motion to the circuit court, act as a supersedeas. The circuit court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may, in the discretion of the circuit judge, be tried in vacation. Either party shall have the right of appeal to the Supreme Court as provided by law from any decision of the circuit court.

(6) In a proceeding conducted under this section by the board for the revocation, suspension or cancellation of a license to practice chiropractic, after a hearing has been conducted as prescribed by this section, the board shall have the power and authority for the grounds stated in subsection (1) of this section, with the exception of paragraph (c) thereof, to assess and levy upon any person licensed to practice chiropractic in the state a monetary penalty in lieu of such revocation, suspension or cancellation, as follows:

(a) For the first violation, a monetary penalty of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) for each violation.

(b) For the second and each subsequent violation, a monetary penalty of not less than One Thousand Dollars ($1,000.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00) for each violation.

The power and authority of the board to assess and levy such monetary penalties under this section shall not be affected or diminished by any other proceeding, civil or criminal, concerning the same violation or violations. A licensee shall have the right of appeal from the assessment and levy of a monetary penalty as provided in this section to the circuit court under the same conditions as a right of appeal is provided for in this section for appeals from an adverse ruling, or order, or decision of the board. Any monetary penalty assessed and levied under this section shall not take effect until after the time for appeal has expired, and an appeal of the assessment and levy of such a monetary penalty shall act as a supersedeas.

(7) In addition to the grounds specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license

suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1973, ch. 501, § 10; reenacted and amended, Laws, 1983, ch. 448, § 10; Laws, 1988, ch. 361; Laws, 1991, ch. 350, § 10; Laws, 1996, ch. 507, § 32; reenacted and amended, Laws, 1997, ch. 428, § 10; Laws, 1999, ch. 406, § 2; reenacted without change, Laws, 2001, ch. 409, § 11; Laws, 2003, ch. 400, § 2; reenacted without change, Laws, 2006, ch. 515, § 10; reenacted and amended, Laws, 2011, ch. 323, § 12; Laws, 2012, ch. 409, § 14; Laws, 2016, ch. 419, § 7, eff from and after July 1, 2016.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (1)(e). The word "Internal" has been inserted so that "United States Revenue Code" now reads "United States Internal Revenue Code." The Joint Committee ratified the correction at its August 5, 2008 meeting.

Editor's Note — For the repeal date of this section, see § 73-6-33.

Amendment Notes — The 2016 amendment extended the repealer for paragraph (1)(q) by substituting "July 1, 2020" for "July 1, 2016" at the end of (1)(q).

Cross References — Board to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health care providers, see § 41-34-3.

Requirement that Board establish procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Minimum record-keeping standards for chiropractors and chiropractic assistants, see § 73-6-18.

Mississippi Veterinary practice law generally, see §§ 73-39-51 et seq.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

§ 73-6-21. Repealed.

Repealed by Laws of 1991, ch. 350, § 17, eff from and after July 1, 1991.

[Laws, 1973, ch. 501, § 11; reenacted and amended, Laws, 1983, ch. 448, § 11]

Editor's Note — Former § 73-6-21 related to reciprocity privileges.

§ 73-6-23. No additional rights conferred upon certificate holders [Repealed effective July 1, 2021].

Nothing in this chapter shall be construed as conferring upon the holder of such certificate the right to practice medicine and surgery as a physician or osteopathic physician as defined by statute, to engage in the practice of physical therapy as defined by statute, to advise or prescribe the use of drugs by his patients, or to advise a patient not to use a drug prescribed by a licensed physician or dentist.

SOURCES: Laws, 1973, ch. 501, § 12; reenacted, Laws, 1983, ch. 448, § 12; reenacted, Laws, 1991, ch. 350, § 11; reenacted without change, Laws, 1997, ch. 428, § 11; reenacted without change, Laws, 2001, ch. 409, § 12; reenacted without change, Laws, 2006, ch. 515, § 11; reenacted without change, Laws, 2011, ch. 323, § 13, eff from and after June 30, 2011.

Editor's Note — For the repeal date of this section, see § 73-6-33.
Cross References — Practice of medicine defined, see § 73-25-33.

§ 73-6-25. Prohibited conduct [Repealed effective July 1, 2021].

(1) The members of the chiropractic profession, licensed or unlicensed, are hereby prohibited from:

(a) Making use of any public statement of a character tending to mislead the public in regard to the health services of the chiropractic profession or of an individual chiropractor, or use of any other professional designation other than the term "chiropractor," "doctor of chiropractic," "D.C." or "chiropractic physician"; however, the use of the title "chiropractic physician" authorized in this paragraph (a) shall not be construed as conferring upon the holder of a license to practice chiropractic any right or responsibility given to a "physician" by any other Mississippi statute, unless the statute specifically confers the right or responsibility on a "chiropractor" or a "chiropractic physician";

(b) Offering discounts or inducements to prospective patients by means of coupons or otherwise to perform professional services during any period of time for a lesser or more attractive price without providing a disclaimer to the public indicating the usual price for other services;

(c) Advertising or promising to guarantee any professional service or to perform any operation painlessly;

(d) Violating any of the provisions of this chapter or any of the rules and regulations of the State Board of Health pursuant to this chapter with regard to the operation and use of x-rays.

(2) Nothing herein shall be construed to prohibit a licensed practitioner of chiropractic from allowing or causing his name, address and telephone number to be inserted in the classified section of a telephone directory under a classification denoting the practitioner's profession. Nothing herein shall be construed to prohibit a licensed practitioner from mailing letters to his clients, but such letters shall otherwise be subject to the provisions of this section.

SOURCES: Laws, 1973, ch. 501, § 13; reenacted and amended, Laws, 1983, ch. 448, § 13; Laws, 1989, ch. 387, § 2; reenacted, Laws, 1991, ch. 350, § 12; reenacted and amended, Laws, 1997, ch. 428, § 12; reenacted without change, Laws, 2001, ch. 409, § 13; Laws, 2004, ch. 467, § 1; reenacted without change, Laws, 2006, ch. 515, § 12; reenacted and amended, Laws, 2011, ch. 323, § 14, eff from and after June 30, 2011.

Editor's Note — For the repeal date of this section, see § 73-6-33.

Cross References — Board to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health care providers, see § 41-34-3.

Requirement that Board establish procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

Penalties for failure to comply with the provisions of this chapter, see § 73-6-29.

§ 73-6-26. Unlawful for persons to claim that they perform chiropractic services without a valid license to practice [Repealed effective July 1, 2021].

It shall be unlawful for any person, corporation or association to, in any manner, make claim, verbally, in writing, or by way of advertising, that they perform chiropractic adjustments/manipulation to the articulations of the human spine unless they hold a valid license to practice chiropractic (D.C.) in the State of Mississippi.

SOURCES: Laws, 2002, ch. 507, § 1; reenacted without change, Laws, 2011, ch. 323, § 15, eff from and after June 30, 2011.

Editor's Note — For the repeal date of this section, see § 73-6-33.

Cross References — Penalties for failure to comply with the provisions of this chapter, see § 73-6-29.

§ 73-6-27. Exemption from examination [Repealed effective July 1, 2021].

Any person who has graduated from a college approved by the International Chiropractors Association or American Chiropractic Association and who was engaged in the full-time practice of chiropractic in Mississippi prior to January 1, 1970, or was engaged in the full-time practice of chiropractic in Mississippi for a period of eight (8) years prior to April 16, 1973, shall be entitled to a license hereunder by making application to the State Board of Chiropractic Examiners without being required to take the examination of the State Board of Chiropractic Examiners, provided he applies for such license within ninety (90) days after the appointment of the initial board, submits reasonable evidence to the board establishing his eligibility for such exemption, and pays a Twenty-five-Dollar registration fee. All other persons practicing chiropractic within the State of Mississippi on April 16, 1973, shall be eligible to take the approved examination.

SOURCES: Laws, 1973, ch. 501, § 14; reenacted, Laws, 1983, ch. 448, § 14; reenacted, Laws, 1991, ch. 350, § 13; reenacted without change, Laws, 1997, ch. 428, § 13; reenacted without change, Laws, 2001, ch. 409, § 14; reenacted without change, Laws, 2006, ch. 515, § 13; reenacted without change, Laws, 2011, ch. 323, § 16, eff from and after June 30, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors. The words "the date of passage of this chapter," were changed to "April 16, 1973," in the first sentence, and the words "at the time of passage of this chapter" were changed to "on April 16, 1973" in the second sentence. The Joint Committee ratified the correction at its May 16, 2002, meeting.

Editor's Note — For the repeal date of this section, see § 73-6-33.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 73-6-29. Offenses; injunctive relief [Repealed effective July 1, 2021].

Anyone failing to comply with the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00), and/or by imprisonment in the county jail for not less than thirty (30) days nor more than one (1) year.

All subsequent offenses shall be separate and distinct offenses, and punishable in like manner.

The State Board of Chiropractic Examiners or the district attorney or county attorney of the county in which the defendant may reside or the Attorney General of Mississippi may institute legal action as provided by law against any person violating the provisions of this chapter, and the chancery court of the county in which any such violation occurred or in which any such person resides or practices shall have jurisdiction to grant injunctive relief against the continuation of any such violation.

SOURCES: Laws, 1973, ch. 501, § 15; reenacted, Laws, 1983, ch. 448, § 15; Laws, 1991, ch. 350, § 14; reenacted without change, Laws, 1997, ch. 428, § 14; reenacted without change, Laws, 2001, ch. 409, § 15; reenacted without change, Laws, 2006, ch. 515, § 14; reenacted without change, Laws, 2011, ch. 323, § 17, eff from and after June 30, 2011.

Editor's Note — For the repeal date of this section, see § 73-6-33.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 73-6-31. Valid license required to engage in practice of chiropractic [Repealed effective July 1, 2021].

No person shall engage in the practice of chiropractic from and after January 1, 1974, unless he has a valid license issued pursuant to this chapter.

SOURCES: Laws, 1973, ch. 501, § 16; reenacted, Laws, 1983, ch. 448, § 16; reenacted, Laws, 1991, ch. 350, § 15; reenacted without change, Laws, 1997, ch. 428, § 15; reenacted without change, Laws, 2001, ch. 409, § 16; reenacted without change, Laws, 2006, ch. 515, § 15; reenacted without change, Laws, 2011, ch. 323, § 18, eff from and after June 30, 2011.

Editor's Note — For the repeal date of this section, see § 73-6-33.
Cross References — Penalties for failure to comply with the provisions of this chapter, see § 73-6-29.

§ 73-6-33. Repeal of Sections 73-6-1 through 73-6-31.

Sections 73-6-1 through 73-6-31, Mississippi Code of 1972, which create the State Board of Chiropractic Examiners and prescribe its duties and powers, shall stand repealed as of July 1, 2021.

SOURCES: Laws, 1979, ch. 301, § 22; Laws, 1979, ch. 357, § 8; Laws, 1983, ch. 448, § 17; Laws, 1991, ch. 350, § 16; reenacted and amended, Laws, 1997, ch. 428, § 16; reenacted and amended, Laws, 2001, ch. 409, § 16; Laws, 2006, ch. 515, § 16; reenacted and amended, Laws, 2011, ch. 323, § 19; Laws, 2016, ch. 316, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment extended the date of the repealer for §§ 73-6-1 through 73-6-31 by substituting "July 1, 2021" for "July 1, 2016."
Cross References — Mississippi Agency Review Law, see § 5-9-13.

§ 73-6-34. Requirements, guidelines, and qualifications for chiropractor doing insurance claims reviews and/or independent examinations.

(1) "Claims review" and/or "independent examinations" are defined as services for third-party entities for the purpose of rendering a decision on chiropractic insurance claims.

(2) Nothing in this section shall prohibit an insurance company or its designees from taking adverse action based upon reviewing a claim if it is determined that the services rendered are not covered under the insurance plan's schedule of benefits or the services are subject to the insurance plan's exclusions and/or limitations. No determination adverse to a chiropractic patient or doctor of chiropractic shall be made on any question relating to the necessity or justification of any form of health care services without prior evaluation and concurrence in the adverse determination by a chiropractor licensed to practice in Mississippi and meeting the following criteria:

(a) Present proof of three hundred (300) classroom hours of study in insurance claim review by a course of study recognized by the Mississippi

State Chiropractic Examining Board. Such proof is to be filed with the Executive Secretary of the Mississippi State Board of Chiropractic Examiners.

(b) Present proof to the Executive Secretary of the Mississippi State Board of Chiropractic Examiners ten (10) hours of continuing education each fiscal year in the instruction or developments in claims review, which must be approved by the Mississippi State Board of Chiropractic Examiners.

(c) Those chiropractors active in doing claims review five (5) years prior to the enactment of this law will be exempt from the three hundred (300) classroom hours educational requirements. Those chiropractors qualifying under subsection (c) of this section must show proof of one hundred (100) hours of study in claims reviews or related subjects, and meet all other requirements.

(d) The Mississippi State Board of Chiropractic Examiners shall issue a certificate to those chiropractors qualifying under this law, and may charge a fee of Twenty-five Dollars ($25.00) to each individual whom the board certifies.

(e) Any chiropractor not complying with this section will be subject to disciplinary action by the Mississippi State Board of Chiropractic Examiners.

(3) No chiropractor shall engage in chiropractic claims review or independent examinations on or after March 19, 1999, unless he has met all requirements in this section.

SOURCES: Laws, 1999, ch. 443, § 1; Laws, 2000, ch. 367, § 3; Laws, 2011, ch. 323, § 20, eff from and after June 30, 2011.

CHAPTER 7

Cosmetologists

General Provisions 73-7-1
Wig Specialists and Wig Salons. [Repealed]
Hair Braiding 73-7-71

GENERAL PROVISIONS

Sec.
73-7-1. State board of cosmetology; membership and appointment; salaries and expenses; notice of meetings [Repealed effective July 1, 2021].
73-7-2. Definitions [Repealed effective July 1, 2021].
73-7-3. Employees; location of offices; compensation [Repealed effective July 1, 2021].
73-7-5. Money received by board to be deposited in special fund; regulation of fund; audit; suspension of board members [Repealed effective July 1, 2021].
73-7-7. Powers of the board [Repealed effective July 1, 2021].
73-7-9. Certificate of registration required [Repealed effective July 1, 2021].
73-7-11. Display of license [Repealed effective July 1, 2021].
73-7-12. Examinations [Repealed effective July 1, 2021].
73-7-13. Admission requirements for examination; temporary permits; issuance of licenses; requirements for barbers to be licensed in cosmetology [Repealed effective July 1, 2021].
73-7-14. Master cosmetologist, manicurist or esthetician license; continuing education requirements for license renewal [Repealed effective July 1, 2021].
73-7-15. Licensing of instructors [Repealed effective July 1, 2021].
73-7-16. Licensing of schools [Repealed effective July 1, 2021].
73-7-17. Licensing of salons [Repealed effective July 1, 2021].
73-7-18. Licensing of estheticians [Repealed effective July 1, 2021].
73-7-19. Renewal of license; fees [Repealed effective July 1, 2021].
73-7-21. Licensing of manicurists; requirements for manicurist to obtain cosmetology license [Repealed effective July 1, 2021].
73-7-23. Reciprocity provisions [Repealed effective July 1, 2021].
73-7-25. Demonstrator's permit [Repealed effective July 1, 2021].
73-7-27. Filing, investigation and disposition of complaints against licensees; revocation, suspension or refusal of licenses or certificates of registration; notice and hearing; rendition of written decision; appeal from from decision of board; imposition of fines by board [Repealed effective July 1, 2021].
73-7-29. Fees [Repealed effective July 1, 2021].
73-7-31. Exceptions to applicability of chapter [Repealed effective July 1, 2021].
73-7-33. Sanitation rules and regulations [Repealed effective July 1, 2021].
73-7-35. Limitations on location of professional practice [Repealed effective July 1, 2021].
73-7-37. Penalty for violations of chapter; proceedings for orders enjoining violations or enforcing compliance with chapter; violations of court orders [Repealed effective July 1, 2021].

§ 73-7-1. State board of cosmetology; membership and appointment; salaries and expenses; notice of meetings [Repealed effective July 1, 2021].

There is hereby continued and reconstituted a State Board of Cosmetology, composed of five (5) members to be appointed by the Governor, with the advice and consent of the Senate, and whose term of office shall be four (4) years from the date of appointment except as otherwise provided herein. However, no more than two (2) members shall be appointed from each Supreme Court district.

There shall be a president of the board and such other officers as deemed necessary by the board elected by and from its membership, provided that the member elected as president shall have at least one (1) year of experience on the board. Any member appointed by the Governor and confirmed by the Senate for a term to begin on or after July 1, 1997, who was designated by the Governor to serve as president of the board, shall be fully qualified to serve on the board for a full term of office, but shall not serve as president of the board unless elected by the membership of the board as provided under this paragraph.

To be eligible for appointment as a member of the State Board of Cosmetology, the person applying shall have been a citizen of this state for a minimum of five (5) years immediately prior to appointment. Such person shall be at least thirty (30) years of age, possess a high school education or its equivalent, and shall have been a licensed cosmetologist with not less than ten (10) years' active practice in cosmetology. No member of the board shall be connected in any way with any school wherein cosmetology is taught, nor shall any two (2) members of the board be graduates of the same school of cosmetology.

However, in the event of vacancy by death or resignation of any member of the board, the Governor shall, within thirty (30) days, appoint a person possessing all qualifications required to serve the remainder of the term. Any member who shall not attend two (2) consecutive meetings of the board for reasons other than illness of such member shall be subject to removal by the Governor. The president of the board shall notify the Governor in writing when any such member has failed to attend two (2) consecutive regular meetings.

The salaries of all paid employees of the board shall be paid out of funds in the board's special fund in the State Treasury. Each member of the board, excepting the inspectors provided for herein, shall receive per diem as authorized by Section 25-3-69, and shall be reimbursed for such other expenses at the same rate and under the same conditions as other state employees as provided for in Section 25-3-41.

The board shall give reasonable public notice of all board meetings not less than ten (10) days prior to such meetings.

SOURCES: Codes, 1942, § 8915-01; Laws, 1948, ch. 367, § 1; Laws, 1960, ch. 384, § 1; Laws, 1964, ch. 450, § 1; Laws, 1970, ch. 405.5, § 1; Laws, 1974, ch. 362, § 1; Laws, 1978, ch. 506, § 1; Laws, 1981, ch. 531, § 1; Laws, 1983, ch. 487, § 1;

reenacted, Laws, 1991, ch. 553, § 1; Laws, 1992, ch. 502, § 8; reenacted, Laws, 1993, ch. 596, § 2; reenacted, Laws, 1995, ch. 383, § 1; reenacted and amended, Laws, 1997, ch. 513, § 1; reenacted without change, Laws, 2005, ch. 492, § 1; reenacted without change, Laws, 2010, ch. 487, § 1; reenacted without change, Laws, 2011, ch. 525, § 1; reenacted without change, Laws, 2013, ch. 523, § 1, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.
Cross References — General powers and duties of governor, see § 7-1-5.
State board of barber examiners, see § 73-5-1.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statute or ordinance regulating beauty shops or beauty culture schools. 56 A.L.R.2d 879.

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 1, 2 et seq.

CJS. 53 C.J.S., Licenses § 58, 59.

§ 73-7-2. Definitions [Repealed effective July 1, 2021].

As used in this chapter, the following terms shall have the meanings ascribed herein unless the context otherwise requires:

(a) "Board" means the State Board of Cosmetology.

(b) "Cosmetology" means any one (1) or a combination of the following practices if they are performed on a person's head, face, neck, shoulder, arms, hands, legs or feet for cosmetic purposes:

(i) Cutting, clipping or trimming hair and hair pieces.

(ii) Styling, arranging, dressing, curling, waving, permanent waving, straightening, cleansing, bleaching, tinting, coloring or similarly treating hair and hair pieces.

(iii) Cleansing, stimulating, manipulating, beautifying or applying oils, antiseptics, clays, lotions or other preparations, either by hand or by mechanical or electrical apparatus.

(iv) Arching eyebrows, to include tweezing, waxing, threading or any other methods of epilation, or tinting eyebrows and eyelashes.

(v) Removing superfluous hair by the use of depilation.

(vi) Manicuring and pedicuring.

(c) "Cosmetologist" means a person who for compensation, whether direct or indirect, engages in the practice of cosmetology.

(d) "Esthetics" means any one (1) or a combination of the following practices:

(i) Massaging the face or neck of a person.

(ii) Arching eyebrows to include trimming, tweezing, waxing, threading or any other method of epilation or tinting eyebrows and eyelashes.

(iii) Tinting eyelashes or eyebrows.

(iv) Waxing, stimulating, cleaning or beautifying the face, neck, arms or legs of a person by any method with the aid of the hands or any mechanical or electrical apparatus, or by the use of a cosmetic preparation.

The term "esthetics" shall not include the diagnosis, treatment or therapy of any dermatological condition.

(e) "Esthetician" means any person who, for compensation, either direct or indirect, engages in the practice of esthetics.

(f) "Instructor" means a person licensed to teach cosmetology, or manicuring and pedicuring, or esthetics, or all of those, pursuant to this chapter, and shall include those persons engaged in the instruction of student instructors.

(g) "Manicuring and pedicuring" means any one (1) or a combination of the following practices:

(i) Cutting, trimming, polishing, coloring, tinting, cleansing or otherwise treating a person's nails.

(ii) Applying artificial nails.

(iii) Massaging or cleaning a person's hands, arms, legs or feet.

(h) "Manicurist" means a person who for compensation, either direct or indirect, engages in the practice of manicuring and pedicuring.

(i) "Master" means a person holding a cosmetology, manicuring and esthetics license who has completed the minimum course of continuing education prescribed by Section 73-7-14.

(j) "Salon" means an establishment operated for the purpose of engaging in the practice of cosmetology, or manicuring and pedicuring, or esthetics, or wigology, or all of those.

(k) "School" means an establishment, public or private, operated for the purpose of teaching cosmetology, or manicuring and pedicuring, or esthetics, or wigology, or all of those.

SOURCES: Laws, 1987, ch. 516, § 1; reenacted, Laws, 1991, ch. 553, § 2; reenacted, Laws, 1993, ch. 596, § 3; reenacted, Laws, 1995, ch. 383, § 2; reenacted without change, Laws, 1997, ch. 513, § 2; reenacted without change, Laws, 2005, ch. 492, § 2; reenacted without change, Laws, 2010, ch. 487, § 2; reenacted without change, Laws, 2011, ch. 525, § 2; Laws, 2013, ch. 523, § 2, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Cross References — Practice of barbering, see §§ 73-5-1 et seq.

ATTORNEY GENERAL OPINIONS

A person engaging in "cosmetology" or "wigology" activities, as those terms are defined in Section 73-7-2, is subject to the jurisdiction of the Mississippi State Board of Cosmetology with regard to those activities, even if the person is also engaged in "hair braiding" activities, Lunsford, July 8, 2005, A.G. Op. 05-0319.

RESEARCH REFERENCES

ALR. Products liability: hair straighteners and relaxants. 84 A.L.R.4th 1090.

Am Jur. 39 Am. Jur. Proof of Facts 2d 417, Negligent Treatment of Beauty Salon

Patron.

§ 73-7-3. Employees; location of offices; compensation [Repealed effective July 1, 2021].

The board shall be authorized to employ such clerical and stenographic assistance, bookkeepers, investigators and other agents as they may deem necessary to carry out the provisions of this chapter, and to fix their tenure of employment and compensation therefor. The members of the board shall file a bond with the Secretary of State in the sum of not less than Five Thousand Dollars ($5,000.00) payable to the State of Mississippi for the faithful performance of their duties. The bond shall be made by a surety company authorized to do business in this state, the premium of the bond to be paid out of any money in the board's special fund in the State Treasury.

The office of the board shall be located in the greater metropolitan area of the City of Jackson, Mississippi, and in the event office space cannot be obtained in any state-owned building, the board is authorized to rent suitable office space and to pay therefor out of funds in the board's special fund. The board shall employ inspectors as needed, not to exceed seven (7), who shall be full-time employees and whose salaries and duties shall be fixed by the board.

The salaries of all paid employees of the board shall be paid out of the funds in the board's special fund. The inspectors shall, in addition to their salaries, be reimbursed for such expenses as are allowed other state employees under the provisions of Section 25-3-41. In addition to the paying of office rent, the board is authorized to purchase necessary office furniture and equipment, stationery, books, certificates and any other equipment necessary for the proper administration of this chapter.

SOURCES: Codes, 1942, § 8915-02; Laws, 1948, ch. 367, § 2; Laws, 1952, ch. 322; Laws, 1960, ch. 384, § 2; Laws, 1964, ch. 450, § 2; Laws, 1970, ch. 405.5, § 2; Laws, 1974, ch. 363; reenacted, Laws, 1983, ch. 487, § 2; reenacted, Laws, 1991, ch. 553, § 3; Laws, 1992, ch. 502, § 9; reenacted, Laws, 1993, ch. 596, § 4; reenacted, Laws, 1995, ch. 383, § 3; reenacted and amended, Laws, 1997, ch. 513, § 3; Laws, 2000, ch. 485, § 1; reenacted without change, Laws, 2005, ch. 492, § 3; reenacted without change, Laws, 2010, ch. 487, § 3; reenacted without change, Laws, 2011, ch. 525, § 3; reenacted without change, Laws, 2013, ch. 523, § 3, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.

§ 73-7-5. Money received by board to be deposited in special fund; regulation of fund; audit; suspension of board members [Repealed effective July 1, 2021].

(1) All fees and any other monies received by the board shall be deposited in a special fund that is created in the State Treasury and shall be used for the implementation and administration of this chapter when appropriated by the

Legislature for such purpose. The monies in the special fund shall be subject to all provisions of the state budget laws that are applicable to special fund agencies, and shall be disbursed by the State Treasurer only upon warrants issued by the State Fiscal Officer upon requisitions signed by the president of the board or another board member designated by the president, and countersigned by the secretary of the board. Any interest earned on this special fund shall be credited by the State Treasurer to the fund and shall not be paid into the State General Fund. Any unexpended monies remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund.

(2) The State Auditor shall audit the financial affairs of the board and the transactions involving the special fund at least once a year in the same manner as for other special fund agencies. In addition, the Governor, in his discretion, shall have the power from time to time to require an audit of the financial affairs of the board, the same to be made by the State Auditor upon request of the Governor. The Governor shall have the power to suspend any member of the board who shall be found in default in any account until such time as it shall be determined whether such default was a result of an act of dishonesty on the part of the member, and in the event it is found that such default is an act of dishonesty, misfeasance or nonfeasance on the part of the member, such member shall be immediately removed by the Governor from office.

SOURCES: Codes, 1942, § 8915-03; Laws, 1948, ch. 367, § 3; Laws, 1964, ch. 450; Laws, 1983, ch. 487, § 3; reenacted, Laws, 1991, ch. 553, § 4; Laws, 1992, ch. 502, § 2; reenacted, Laws, 1993, ch. 596, § 5; reenacted, Laws, 1995, ch. 383, § 4; reenacted without change, Laws, 1997, ch. 513, § 4; reenacted without change, Laws, 2005, ch. 492, § 4; reenacted without change, Laws, 2010, ch. 487, § 4; reenacted without change, Laws, 2011, ch. 525, § 4; reenacted without change, Laws, 2013, ch. 523, § 4, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — State depositories generally, see § 27-105-1 et seq.

§ 73-7-7. Powers of the board [Repealed effective July 1, 2021].

(1) The board shall have authority to make reasonable rules and regulations for the administration of the provisions of this chapter. The board shall set up a curriculum for operation of schools of cosmetology and the other professions it is charged to regulate in this state. The board shall receive and consider for adoption recommendations for rules and regulations, school curriculum, and related matters from the Mississippi Cosmetology Council, whose membership shall consist of, in addition to the board members, five (5) elected delegates from the Mississippi Cosmetology Association, five (5) elected

delegates from the Mississippi Cosmetology School Association, five (5) elected delegates from the Mississippi Independent Beauticians Association, and five (5) elected delegates from the School Owners and Teachers Association. The board may revoke the license of any cosmetologist, esthetician, manicurist, instructor, school of cosmetology, or salon, or may refuse to issue a license to any cosmetologist, esthetician, manicurist, instructor, school of cosmetology, or salon that fails or refuses to comply with the provisions of this chapter and the rules and regulations of the board in carrying out the provisions of this chapter.

(2) The board shall have authority to prescribe reasonable rules and regulations governing sanitation of schools of cosmetology and beauty salons for the guidance of persons licensed under this chapter in the operation of schools of cosmetology, or a beauty salon, and in the practice of cosmetology, esthetics, manicuring and pedicuring, and wigology. However, any and all rules and regulations relating to sanitation shall, before adoption by the board, have the written approval of the State Board of Health. When the board has reason to believe that any of the provisions of this chapter or of the rules and regulations of the board have been violated, either upon receipt of a written complaint alleging such violations or upon the board's own initiative, the board, or any of its authorized agents, shall investigate same and shall have authority to enter upon the premises of a school of cosmetology or salon at any time during the regular business hours of that school or salon to conduct the investigation. Such investigation may include, but not be limited to, conducting oral interviews with the complaining party, school or salon owner(s) and/or students of the school, and reviewing records of the school or salon pertinent to the complaint and related to an area subject to the authority of the board. Such investigation shall not include written interviews or surveys of school employees or students, and the privacy of patrons shall be respected by any person making such investigation.

(3) On or before July 1, 2001, the board shall adopt regulations to ensure that all fingernail service products used by licensed cosmetologists, manicurists and other licensees do not contain methyl methacrylate (MMA) as a monomer agent for cosmetic nail applications.

(4) If the board finds that a violation of the provisions of this chapter or the rules and regulations of the board has occurred, it may cause a hearing to be held as set forth in Section 73-7-27.

SOURCES: Codes, 1942, § 8915-04; Laws, 1948, ch. 367, § 4; Laws, 1964, ch. 450, § 4; Laws, 1978, ch. 506, § 2; Laws, 1982, ch. 448, § 1; reenacted, Laws, 1983, ch. 483, § 4; Laws, 1987, ch. 516, § 2; reenacted, Laws, 1991, ch. 553, § 5; reenacted, Laws, 1993, ch. 596, § 6; reenacted, Laws, 1995, ch. 383, § 5; reenacted and amended, Laws, 1997, ch. 513, § 5; Laws, 2000, ch. 485, § 2; reenacted without change, Laws, 2005, ch. 492, § 5; reenacted without change, Laws, 2010, ch. 487, § 5; reenacted without change, Laws, 2011, ch. 525, § 5; Laws, 2013, ch. 523, § 5, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.
Cross References — State Board of Health generally, see § 41-3-1 et seq.
Investigation of complaints against licensees filed with board, see § 73-7-27.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statute or ordinance regulating beauty shops or beauty culture schools. 56 A.L.R.2d 879.

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 1, 2 et seq.

CJS. 53 C.J.S., Licenses § 58, 59.

§ 73-7-9. Certificate of registration required [Repealed effective July 1, 2021].

No person required by this chapter to have a license shall conduct a beauty salon or school of cosmetology, or practice cosmetology, esthetics, manicuring and pedicuring, or practice as an instructor, unless such person has received a license or temporary permit therefor from the board. Students determined to have violated any of these rules or regulations prior to being licensed by the board shall be subject to the same discipline by the board as licensees. They may be disciplined and fined accordingly.

SOURCES: Codes, 1942, § 8915-05; Laws, 1948, ch. 367, § 5; Laws, 1964, ch. 450, § 5; reenacted, Laws, 1983, ch. 487, § 5; Laws, 1987, ch. 516, § 3; reenacted, Laws, 1991, ch. 553, § 6; reenacted, Laws, 1993, ch. 596, § 7; reenacted, Laws, 1995, ch. 383, § 6; reenacted and amended, Laws, 1997, ch. 513, § 6; reenacted without change, Laws, 2005, ch. 492, § 6; reenacted without change, Laws, 2010, ch. 487, § 6; reenacted without change, Laws, 2011, ch. 525, § 6; Laws, 2013, ch. 523, § 6, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Cross References — Licensing of cosmetology instructors, see § 73-7-15.

Licensing of schools, see § 73-7-16.

License expiration and renewal, see § 73-7-19.

Revocation, suspension or refusal of licenses or certificates of registration, see § 73-7-27.

Fees, see § 73-7-29.

Penalties for violations, see § 73-7-37.

RESEARCH REFERENCES

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

39 Am. Jur. Proof of Facts 2d 417, Negligent Treatment of Beauty Salon Patron.

CJS. 53 C.J.S., Licenses §§ 70-72.

§ 73-7-11. Display of license [Repealed effective July 1, 2021].

Each owner of a license issued by the board under the provisions of this chapter shall display the license in a conspicuous place in his or her principal office, place of business or employment, at all times.

Each practitioner and instructor license shall contain a head photograph of the license holder, the person's name, and the type of license held by the person. The requirements of this section shall apply at the time of issuance of a new license or at the time of renewal of an existing license.

SOURCES: Codes, 1942, § 8915-06; Laws, 1948, ch. 367, § 6; reenacted without change, Laws, 1983, ch. 487, § 6; reenacted, Laws, 1991, ch. 553, § 7; reenacted, Laws, 1993, ch. 596, § 8; reenacted, Laws, 1995, ch. 383, § 7; reenacted without change, Laws, 1997, ch. 513, § 7; reenacted without change, Laws, 2005, ch. 492, § 7; reenacted without change, Laws, 2010, ch. 487, § 7; reenacted without change, Laws, 2011, ch. 525, § 7; Laws, 2013, ch. 523, § 7; reenacted without change, Laws, 2013, ch. 542, § 1; Laws, 2017, ch. 380, § 1, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 7 of ch. 523, Laws of 2013, effective from and after July 1, 2013 (approved April 23, 2013), reenacted this section without change. Section 1 of ch. 542, Laws of 2013, effective from and after July 1, 2013 (approved April 25, 2013), amended this section. As set out above, this section reflects the language of Section 1 of ch. 542, Laws of 2013, which contains language that specifically provides that it supersedes § 73-7-11 as reenacted by ch. 523, Laws of 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Amendment Notes — The 2017 amendment inserted "practitioner and instructor" near the beginning of the second paragraph.

Cross References — Penalties for violation, see § 73-7-37.

§ 73-7-12. Examinations [Repealed effective July 1, 2021].

The State Board of Cosmetology shall contract with a recognized testing service to conduct examinations for cosmetologists, estheticians, manicurists and instructors at such times and locations as determined by the contracted testing service. No member of the board shall be authorized to personally administer the examinations.

SOURCES: Laws, 1987, ch. 516, § 4; reenacted, Laws, 1991, ch. 553, § 8; reenacted, Laws, 1993, ch. 596, § 9; reenacted, Laws, 1995, ch. 383, § 8; reenacted without change, Laws, 1997, ch. 513, § 8; reenacted without change, Laws, 2005, ch. 492, § 8; reenacted without change, Laws, 2010, ch. 487, § 8; reenacted and amended, Laws, 2011, ch. 525, § 8; Laws, 2013, ch. 523, § 8, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Cross References — Admission requirements for examination, see § 73-7-13.

Fees, see § 73-7-29.

RESEARCH REFERENCES

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

CJS. 53 C.J.S., Licenses § 63.

§ 73-7-13. Admission requirements for examination; temporary permits; issuance of licenses; requirements for barbers to be licensed in cosmetology [Repealed effective July 1, 2021].

(1) The board shall admit to examination for a cosmetology license any person who has made application to the board in proper form, has paid the

required fee, and who (a) is at least seventeen (17) years of age, (b) can read, write and speak English, (c) has successfully completed no less than fifteen hundred (1500) hours over a period of no less than nine (9) months in a licensed school of cosmetology, and (d) has a high school education or its equivalent or has been successfully enrolled in a community college.

(a) The board may, in its discretion, issue to any student who has completed the prescribed hours in a licensed school and paid the required fee a temporary permit until such time as the next examination may be held, but such student shall be issued only one (1) temporary permit. Application for an examination and license shall be accompanied by two (2) passport photographs of the applicant. No temporary permit will be issued to an applicant from any other state to operate a beauty salon or school of cosmetology in this state unless in case of emergency.

(b) Applicants for the cosmetologist examination, after having satisfactorily passed the prescribed examination, shall be issued a cosmetology license which until June 30, 2001, shall be valid for one (1) year, and after July 1, 2001, shall be valid for two (2) years, and all those licenses shall be subject to renewal.

(c) Any barber who can read, write and speak English and has successfully completed no less than fifteen hundred (1500) hours in a licensed barber school, and who holds a current valid certificate of registration to practice barbering and who holds a current valid license, is eligible to take the cosmetology examination to secure a cosmetology license upon successfully completing five hundred (500) hours in a licensed school of cosmetology. All fees for application, examination, registration and renewal thereof shall be the same as provided for cosmetologists.

(2) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

(3) Any licensed cosmetologist, esthetician, or manicurist who is registered but not actively practicing in the State of Mississippi at the time of making application for renewal, may apply for registration on the "inactive" list. Such "inactive" list shall be maintained by the board and shall set out the names and post office addresses of all persons registered but not actively practicing in this state, arranged alphabetically by name and also by the municipalities and states of their last-known professional or residential address. Only the cosmetologists, estheticians and manicurists registered on the appropriate list as actively practicing in the State of Mississippi shall be authorized to practice those professions. For the purpose of this section, any licensed cosmetologist, esthetician or manicurist who has actively practiced his or her profession for at least three (3) months of the immediately preceding license renewal period shall be considered inactive practice. No cosmetologist, esthetician, or manicurist shall be registered on the "inactive" list until the person has furnished a statement of intent to take such action to the board. Any licensed cosmetologist, esthetician, manicurist or wigologist registered on the "inactive" list shall not be eligible for registration on the active list until either of the following conditions have been satisfied:

(a) Written application shall be submitted to the State Board of Cosmetology stating the reasons for such inactivity and setting forth such other information as the board may require on an individual basis and completion of the number of clock hours of continuing education as approved by the board; or

(b) Evidence to the satisfaction of the board shall be submitted that they have actively practiced their profession in good standing in another state and have not been guilty of conduct that would warrant suspension or revocation as provided by applicable law; and

(c) Payment of the fee for processing such inactive license shall be paid biennially in accordance to board rules.

SOURCES: Codes, 1942, § 8915-07; Laws, 1948, ch. 367, § 7; Laws, 1960, ch. 384, § 3; Laws, 1964, ch. 450, § 6; Laws, 1982, ch. 448, § 2; reenacted, Laws, 1983, ch. 487, § 7; Laws, 1987, ch. 516, § 5; Laws, 1988, ch. 537, § 1; reenacted, Laws, 1991, ch. 553, § 9; Laws, 1993, ch. 596, § 10; reenacted, Laws, 1995, ch. 383, § 9; reenacted without change, Laws, 1997, ch. 513, § 9; Laws, 1997, ch. 588, § 29; Laws, 2000, ch. 485, § 3; reenacted without change, Laws, 2005, ch. 492, § 9; reenacted without change, Laws, 2010, ch. 487, § 9; reenacted without change, Laws, 2011, ch. 525, § 9; Laws, 2013, ch. 523, § 9; Laws, 2015, ch. 345, § 1; Laws, 2017, ch. 380, § 2, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 9 of ch. 513, Laws of 1997, reenacted this section without change, effective June 30, 1997. Section 29 of ch. 588, Laws of 1997, effective July 1, 1997, amended this section. As set out above, this section reflects the language of Section 29 of ch. 588, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Amendment Notes — The 2017 amendment, in (1), substituted "a licensed school of cosmetology" for "an accredited school of cosmetology" near the end of the introductory paragraph and near the end of the first sentence of (c), and substituted "a licensed barber school" for "an accredited barber school" near the beginning of (c).

Cross References — Certain cosmetologists being eligible to take barber examination, see § 73-5-12.

Master cosmetologist license, see § 73-7-14.

Licensing of salons, see § 73-7-17.

Licensing of estheticians, see § 73-7-18.

Expiration of application for examination, see § 73-7-19.

Licensing of manicurists, see § 73-7-21.

Revocation, suspension or refusal of licenses or certificates of registration, see § 73-7-27.

Fees, see § 73-7-29.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statute or ordinance regulating beauty shops, or beauty culture schools. 56 A.L.R.2d 879.

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

39 Am. Jur. Proof of Facts 2d 417, Negligent Treatment of Beauty Salon Patron.

CJS. 53 C.J.S., Licenses §§ 62, 63, 65, 66, 70-72.

§ 73-7-14. Master cosmetologist, manicurist or esthetician license; continuing education requirements for license renewal [Repealed effective July 1, 2021].

(1) Any person who holds a current, valid cosmetology, manicuring or esthetics license may be licensed as a master cosmetologist, manicurist or esthetician if he or she has been a licensed cosmetologist, manicurist or esthetician in this state for a period of not less than twelve (12) months, and has completed a minimum course of sixteen (16) hours' study in continuing education approved by the board within the licensing period preceding initial application for the license, and has paid the original license fee. Master cosmetologist, manicurist or esthetician licenses shall be renewable upon completion of a minimum course of eight (8) hours' study in continuing education approved by the board within a licensing period and payment of the required renewal fee. This is an optional license and persons who do not wish to complete the continuing education requirement may obtain a cosmetology license when renewing their license.

(2) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Laws, 1987, ch. 516, § 6; reenacted, Laws, 1991, ch. 553, § 10; reenacted, Laws, 1993, ch. 596, § 11; reenacted, Laws, 1995, ch. 383, § 10; reenacted without change, Laws, 1997, ch. 513, § 10; Laws, 1997, ch. 588, § 30; reenacted without change, Laws, 2005, ch. 492, § 10; reenacted without change, Laws, 2010, ch. 487, § 10; reenacted without change, Laws, 2011, ch. 525, § 10; Laws, 2013, ch. 523, § 10, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 10 of ch. 513, Laws of 1997, reenacted this section without change, effective June 30, 1997. Section 30 of ch. 588, Laws of 1997, effective July 1, 1997, amended this section. As set out above, this section reflects the language of Section 30 of ch. 588, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Laws of 1993, ch. 596, § 11, reenacted two code sections, § 73-7-14 and § 73-7-15.

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Revocation, suspension or refusal of licenses or certificates of registration, see § 73-7-27.

Fees, see § 73-7-29.

RESEARCH REFERENCES

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

CJS. 53 C.J.S., Licenses §§ 50, 52 et seq.

§ 73-7-15. Licensing of instructors [Repealed effective July 1, 2021].

(1) The board shall admit to examination for a cosmetology instructor's license any person who has made application to the board in proper form, has paid the required fee, and who:

(a) Is not less than twenty-one (21) years of age;

(b) Can read, write and speak English;

(c) Is a graduate of a licensed cosmetology school;

(d) Has a high school education or its equivalent;

(e) Has successfully completed one thousand (1,000) hours of instructor training in a licensed school of cosmetology;

(f) Has successfully completed six (6) semester hours in college courses approved by the board;

(g) Holds a current, valid Mississippi cosmetology license; and

(h) Has at least one (1) year active practical experience as a cosmetologist or, as an alternative to such experience, has successfully completed one thousand (1,000) hours of instructor training in a licensed school of cosmetology.

(2) The board shall admit to examination for an esthetics instructor's license any person who has made application to the board in proper form, has paid the required fee, and who:

(a) Is not less than twenty-one (21) years of age;

(b) Can read, write and speak English;

(c) Has a high school education or its equivalent;

(d) Has successfully completed one thousand (1,000) hours of instructor training in a licensed school in which the practice of esthetics is taught;

(e) Has successfully completed six (6) semester hours in college courses approved by the board;

(f) Holds a current, valid Mississippi esthetician's license; and

(g) Has had one (1) year of active practical experience as an esthetician or, as an alternative to such experience, has successfully completed one thousand (1,000) hours of instructor training in a licensed school in which the practice of esthetics is taught.

(3) The board shall admit to examination for a manicurist instructor's license any person who has made application to the board in proper form, has paid the required fee, and who:

(a) Is not less than twenty-one (21) years of age;

(b) Can read, write and speak English;

(c) Has a high school education or its equivalent;

(d) Has successfully completed one thousand (1,000) hours of instructor training in a licensed school in which the practice of manicuring is taught;

(e) Has successfully completed six (6) semester hours in college courses approved by the board;

(f) Holds a current, valid Mississippi manicurist's license; and

(g) Has had one (1) year of active practical experience as a manicurist or, as an alternative to such experience, has successfully completed one thousand (1,000) hours of instructor training in a licensed school in which the practice of manicuring is taught.

(4) Applicants shall satisfactorily pass the examination prescribed by the board for licensing instructors prior to the issuance of the licenses provided for in this section. However, the board may, in its discretion, issue a temporary instructor's permit until such time as the next examination may be held, but such applicant shall be issued only one (1) temporary permit. All applications for an instructor's examination shall be accompanied by two (2) recent head photographs of the applicant.

(5) All instructors licensed pursuant to this section shall biennially obtain twenty-four (24) clock hours of continuing education in teacher training instruction in cosmetology or esthetics or manicuring, as the case may be, as approved by the board. Any instructor who fails to obtain the continuing education required by this subsection shall not be allowed to instruct nor enroll students under his or her license until such education requirement has been met. The board may issue an inactive instructor's license to such instructors, and an inactive license may be converted into an active license after proof satisfactory to the board of completion of at least twenty-four (24) clock hours of approved continuing education required for teacher training instruction.

(6) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Codes, 1942, § 8915-08; Laws, 1948, ch. 367, § 8; Laws, 1960, ch. 384, § 4; Laws, 1964, ch. 450, § 7; Laws, 1979, ch. 444, § 1; Laws, 1982, ch. 448, § 2; Laws, 1983, ch. 487, § 8; Laws, 1987, ch. 516, § 7; reenacted, Laws, 1991, ch. 553, § 11; reenacted, Laws, 1993, ch. 596, § 11; reenacted, Laws, 1995, ch. 383, § 11; reenacted and amended, Laws, 1997, ch. 513, § 11; Laws, 1997, ch. 588, § 31; Laws, 2000, ch. 485, § 4; reenacted without change, Laws, 2005, ch. 492, § 11; reenacted without change, Laws, 2010, ch. 487, § 11; reenacted without change, Laws, 2011, ch. 525, § 11; Laws, 2013, ch. 523, § 11; Laws, 2017, ch. 380, § 3, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 11 of ch. 513, Laws of 1997, reenacted and amended this section, effective June 30, 1997. Section 31 of ch. 588, Laws of 1997, effective July 1, 1997, also amended this section. As set out above, this section reflects the language of Section 31 of ch. 588, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Laws of 1993, ch. 596, § 11, reenacted two code sections, § 73-7-14 and § 73-7-15.

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Amendment Notes — The 2017 amendment substituted "a licensed" for "an accredited" everywhere it appears; in (1), substituted "one thousand (1,000) hours" for "seven hundred fifty (750) hours" in (e), "six (6) semester hours" for "twelve (12) semester hours" in (f), and in (h), "one (1) year" for "two years" and "one thousand (1,000) hours" for "two thousand (2,000) hours"; in (2), substituted "one thousand (1,000) hours" for "six hundred (600) hours" in (d), "six (6) semester hours" for "twelve (12) semester hours" in (e), and "one (1) year" for "two (2) years" in (g); and in (3), substituted "one thousand (1,000) hours" for "six hundred (600) hours" in (d), "six (6) semester hours" for "twelve (12) semester hours" in (e), and "one (1) year" for "two (2) years" in (g).

Cross References — Licensing of schools, see § 73-7-16.

Renewal of license, see § 73-7-19.

Revocation, suspension or refusal of licenses or certificates of registration, see § 73-7-27.

Fees, see § 73-7-29.

RESEARCH REFERENCES

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

CJS. 53 C.J.S., Licenses §§ 62, 63, 65, 66, 70-72.

§ 73-7-16. Licensing of schools [Repealed effective July 1, 2021].

(1) All schools of cosmetology or school owners shall have a school license and shall pay to the board the required license fee biennially therefor. A grace period of sixty (60) days will be given in which to renew the license, and upon the expiration of the grace period of sixty (60) days, any applicant for the renewal of a school license will be required to pay a delinquent fee in addition to the renewal fee. The board is hereby authorized and empowered to promulgate necessary and reasonable rules and regulations for the issuance and renewal of school licenses. However, the board shall not refuse to issue or renew a school's license because of the number of schools already in that area of the state, and any rule promulgated by the board for that purpose shall be null and void.

(2) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

(3) The board shall require all schools of cosmetology to only admit students who have not less than a Tenth-Grade education or a high school diploma or its equivalency.

SOURCES: Laws, 1987, ch. 516, § 8; reenacted, Laws, 1991, ch. 553, § 12; reenacted, Laws, 1993, ch. 596, § 12; reenacted, Laws, 1995, ch. 383, § 12; reenacted without change, Laws, 1997, ch. 513, § 12; Laws, 1997, ch. 588, § 32; reenacted without change, Laws, 2005, ch. 492, § 12; reenacted without change, Laws, 2010, ch. 487, § 12; Laws, 2010, ch. 507, § 2; Laws,

2011, ch. 371, § 1; reenacted and amended, Laws, 2011, ch. 525, § 12; Laws, 2013, ch. 523, § 12; Laws, 2017, ch. 380, § 4, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 12 of ch. 513, Laws of 1997, reenacted this section without change, effective June 30, 1997. Section 32 of ch. 588, Laws of 1997, effective July 1, 1997, amended this section. As set out above, this section reflects the language of Section 32 of ch. 588, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Section 2 of ch. 507, Laws of 2010, effective July 1, 2010 (approved April 13, 2010), amended this section. Section 12 of ch. 487, Laws of 2010, effective July 1, 2010 (approved April 7, 2010), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 507, Laws of 2010, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 1 of ch. 371, Laws of 2011, effective from and after July 1, 2011 (approved March 11, 2011), amended this section. Section 12 of ch. 525, Laws of 2011, effective from and after July 1, 2011 (approved April 26, 2011), also amended this section. As set out above, this section reflects the language of Section 12 of ch. 525, Laws of 2011, which contains language that specifically provides that it supersedes § 73-7-16 as amended by Laws of 2011, ch. 371.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Laws of 1993, ch. 596, § 12, reenacted two code sections, § 73-7-16 and § 73-7-17.

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Amendment Notes — The 2017 amendment rewrote (3), which read: "The board shall require all schools of cosmetology to only admit students who met minimum competencies on an acceptable aptitude test unless enrolled in a high school cosmetology program."

Cross References — Licensing of instructors, see § 73-7-15.

Revocation, suspension or refusal of licenses or certificates of registration, see § 73-7-27.

Fees, see § 73-7-29.

Penalties for violations, see § 73-7-37.

RESEARCH REFERENCES

ALR. Liability of cosmetology school for injury to patron. 81 A.L.R.4th 444.

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

CJS. 53 C.J.S., Licenses §§ 50, 52 et seq.

§ 73-7-17. Licensing of salons [Repealed effective July 1, 2021].

(1) All salon owners shall have a salon license and shall pay to the board the required license fee therefor and pay the required renewal fee for renewal thereof. A grace period of sixty (60) days will be given in which to renew the license, and upon the expiration of the grace period of sixty (60) days any

applicant for the renewal of a salon license will be required to pay a delinquent fee in addition to the renewal fee. A salon license that has been expired for over one (1) year is nonrenewable and requires a new application. Prior to the initial issuance of such license, the board shall inspect the premises to determine if same qualifies with the law, upon payment by the applicant of the required inspection fee.

(2) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 8915-09; Laws, 1948, ch. 367, § 9; Laws, 1960, ch. 384, § 5; Laws, 1964, ch. 450, § 8; Laws, 1979, ch. 444, § 2; reenacted, Laws, 1983, ch. 487, § 9; Laws, 1987, ch. 516, § 9; reenacted, Laws, 1991, ch. 553, § 13; reenacted, Laws, 1993, ch. 596, § 12; reenacted, Laws, 1995, ch. 383, § 13; reenacted without change, Laws, 1997, ch. 513, § 13; Laws, 1997, ch. 588, § 33; reenacted without change, Laws, 2005, ch. 492, § 13; reenacted without change, Laws, 2010, ch. 487, § 13; reenacted without change, Laws, 2011, ch. 525, § 13; Laws, 2013, ch. 523, § 13, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 13 of ch. 513, Laws of 1997, reenacted this section without change, effective June 30, 1997. Section 33 of ch. 588, Laws of 1997, effective July 1, 1997, also amended this section. As set out above, this section reflects the language of Section 33 of ch. 588, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Laws of 1993, ch. 596, § 12, reenacted two code sections, § 73-7-16 and § 73-7-17.

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Revocation, suspension or refusal of licenses or certificates of registration, see § 73-7-27.

Fees, see § 73-7-29.

Limitations on location of professional practice, see § 73-7-35.

Penalties for violations, see § 73-7-37.

§ 73-7-18. Licensing of estheticians [Repealed effective July 1, 2021].

(1) The board shall admit to examination for an esthetician's license any person who has made application to the board in proper form, has paid the required fee, and who:

(a) Is not less than seventeen (17) years of age;

(b) Can read, write and speak English;

(c) Has a high school education or its equivalent; and

(d) Has successfully completed a course of training in esthetics of not less than six hundred (600) hours in an accredited school in which the practice of esthetics is taught, including not less than one hundred (100) hours of theory and five hundred (500) hours of skill practice.

Any licensed esthetician wishing to acquire a cosmetology license may apply the six hundred (600) hours of esthetics training toward the requirements for a cosmetology license.

(2) Every person who has completed not less than three hundred fifty (350) hours of training in esthetics approved by the board in this or any other state prior to July 1, 1987, shall be registered with the board within a period not exceeding six (6) months after July 1, 1987, and shall be granted an esthetician's license by the board if such person presents satisfactory evidence to the board that he or she has fulfilled all the requirements to be admitted to examination except the training hours requirement.

(3) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Laws, 1987, ch. 516, § 10; reenacted, Laws, 1991, ch. 553, § 14; Laws, 1993, ch. 596, § 13; reenacted, Laws, 1995, ch. 383, § 14; reenacted without change, Laws, 1997, ch. 513, § 14; Laws, 1997, ch. 588, § 34; reenacted without change, Laws, 2005, ch. 492, § 14; reenacted without change, Laws, 2010, ch. 487, § 14; reenacted without change, Laws, 2011, ch. 525, § 14; reenacted without change, Laws, 2013, ch. 523, § 14, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 14 of ch. 513, Laws of 1997, reenacted this section without change, effective June 30, 1997. Section 34 of ch. 588, Laws of 1997, effective July 1, 1997, also amended this section. As set out above, this section reflects the language of Section 34 of ch. 588, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Cross References — Renewal of license, see § 73-7-19.

Licensing of manicurists, see § 73-7-21.

Revocation, suspension or refusal of licenses or certificates of registration, see § 73-7-27.

Fees, see § 73-7-29.

Penalties for violations, see § 73-7-37.

§ 73-7-19. Renewal of license; fees [Repealed effective July 1, 2021].

(1) Except as provided in Section 33-1-39, all licenses shall be renewed biennially under the fee schedule in Section 73-7-29. Applications for renewal of licenses for cosmetologists, estheticians, manicurists and instructors must be accompanied by the required renewal fee. A grace period of sixty (60) days will be given in which to renew the license; and upon the expiration of the grace period of sixty (60) days, any applicant for the renewal of a license will be required to pay the required renewal fee and a delinquent fee in addition to the renewal fee. The fees may be paid by either personal or certified check, cash or

money order, under such safeguards, rules and regulations as the board may prescribe. Checks returned to the board because of insufficient funds shall result in nonrenewal of the license, which will require the penalty fee for insufficient fund checks plus all other amounts due for renewal of the license before the license may be renewed. After one (1) year has passed from the expiration date of the license, a delinquent fee must be paid for each year up to three (3) years, after which the required examination must be taken. All applications for examination required by this chapter shall expire ninety (90) days from the date thereof.

(2) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Codes, 1942, § 8915-10; Laws, 1948, ch. 367, § 10; Laws, 1964, ch. 450, § 9; Laws, 1979, ch. 444, § 3; Laws, 1982, chs. 330, 448, § 4; Laws, 1983, ch. 487, § 10; Laws, 1987, ch. 516, § 11; reenacted, Laws, 1991, ch. 553, § 15; reenacted, Laws, 1993, ch. 596, § 14; reenacted, Laws, 1995, ch. 383, § 15; reenacted without change, Laws, 1997, ch. 513, § 15; Laws, 1997, ch. 588, § 35; Laws, 2000, ch. 485, § 5; reenacted without change, Laws, 2005, ch. 492, § 15; Laws, 2007, ch. 309, § 8; reenacted without change, Laws, 2010, ch. 487, § 15; reenacted without change, Laws, 2011, ch. 525, § 15; Laws, 2013, ch. 523, § 15, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 15 of ch. 513, Laws of 1997, reenacted this section without change, effective June 30, 1997. Section 35 of ch. 588, Laws of 1997, effective July 1, 1997, amended this section. As set out above, this section reflects the language of Section 35 of ch. 588, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect earlier.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Cosmetologists eligible to take barber examination, see § 73-5-12.

Master cosmetologist license, see § 73-7-14.

Licensing of estheticians, see § 73-7-18.

Licensing of manicurists, see § 73-7-21.

Revocation, suspension or refusal of licenses or certificates of registration, see § 73-7-27.

Fees, see § 73-7-29.

Penalties for violations, see § 73-7-37.

RESEARCH REFERENCES

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

CJS. 53 C.J.S., Licenses §§ 80, 82, 84-86, 88, 91.

§ 73-7-21. Licensing of manicurists; requirements for manicurist to obtain cosmetology license [Repealed effective July 1, 2021].

(1) The board shall admit to examination for a manicurist's license any person who has made application to the board in proper form, has paid the required fee, and who:

(a) Is at least seventeen (17) years of age;

(b) Can read, write and speak English;

(c) Has successfully completed no less than three hundred fifty (350) hours of practice and related theory in manicuring and pedicuring over a period of no less than nine (9) weeks in an accredited school of cosmetology in this or any other state; and

(d) Has a high school education or its equivalent.

(2) Licensed manicurists desiring to pursue additional hours to be eligible for a license as a cosmetologist may be credited with the three hundred fifty (350) hours acquired in studying and training to be a manicurist which may be applied to the number of hours required for a cosmetology license examination.

(3) The board shall adopt regulations governing the use of electric nail files for the purpose of filing false or natural nails.

(4) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Codes, 1942, § 8915-11; Laws, 1948, ch. 367, § 11; Laws, 1964, ch. 450, § 10; reenacted without change, Laws, 1983, ch. 487, § 11; Laws, 1987, ch. 516, § 12; reenacted, Laws, 1991, ch. 553, § 16; Laws, 1993, ch. 596, § 15; reenacted, Laws, 1995, ch. 383, § 16; reenacted and amended, Laws, 1997, ch. 513, § 16; Laws, 1997, ch. 588, § 36; Laws, 2000, ch. 485, § 6; reenacted without change, Laws, 2005, ch. 492, § 16; reenacted and amended, Laws, 2010, ch. 487, § 16; reenacted without change, Laws, 2011, ch. 525, § 16; Laws, 2013, ch. 523, § 16, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 16 of ch. 513, Laws of 1997, effective June 30, 1997, reenacted and amended this section. Section 36 of ch. 588, Laws of 1997, effective July 1, 1997, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the May 8, 1997, meeting of the Committee.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Renewal of license, see § 73-7-19.

Revocation, suspension or refusal of licenses or certificates of registration, see § 73-7-27.

Fees, see § 73-7-29.

Penalties for violations, see § 73-7-37.

RESEARCH REFERENCES

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

CJS. 53 C.J.S., Licenses §§ 62, 63, 65, 66, 70-72.

§ 73-7-23. Reciprocity provisions [Repealed effective July 1, 2021].

(1) The board may, upon application, issue a license by reciprocity to any cosmetologist, esthetician or manicurist over the age of seventeen (17) years from any other state who has satisfactorily completed the required number of accredited hours in that state, provided the state board from which the applicant comes issues to cosmetologists, estheticians or manicurists, as the case may be, from the State of Mississippi a license under the same conditions. Applications must be accompanied by (a) proof satisfactory to the board that the required hours have been completed, and (b) the required reciprocity fee, which shall be paid to the board.

(2) An instructor from any other state may be qualified for a Mississippi instructor's license upon presenting a valid instructor's license and proof of a high school education or its equivalent, provided that the instructor (a) is not less than twenty-one (21) years of age, (b) has completed training equivalent to the State of Mississippi's training as provided in Section 73-7-15 or has three (3) years or more of experience as a licensed instructor prior to application, (c) can read, write and speak English, (d) has completed twelve (12) semester hours in college courses approved by the board, and (e) has completed a minimum of five (5) continuing education hours in Mississippi board laws, rules and regulations. Such application must be accompanied by two (2) recent passport photographs of the applicant. Applicants shall pay the required license fee.

(3) An applicant for a Mississippi instructor's license by reciprocity who has not completed the college courses requirement at the time of application may apply for a one-time temporary teaching permit, which shall be valid for six (6) months and shall be nonrenewable. Such application must be accompanied by proof of enrollment in college course(s), required permit fee, two (2) recent passport photographs of the applicant and other documentation as required for application for a Mississippi instructor's license by reciprocity. Upon proof of completion of college courses and payment of the required license fee, a Mississippi instructor's license shall be issued.

(4) The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Codes, 1942, § 8915-12; Laws, 1948, ch. 367, § 12; Laws, 1960, ch. 384, § 6; Laws, 1964, ch. 450, § 11; Laws, 1979, ch. 444, § 4; Laws, 1982, ch. 448, § 5; reenacted, Laws, 1983, ch. 487, § 12; Laws, 1986, ch. 344; Laws, 1987, ch. 516, § 13; reenacted, Laws, 1991, ch. 553, § 17; reenacted, Laws, 1993, ch. 596, § 16; reenacted, 1995, ch. 383, § 17; reenacted and amended, Laws, 1997, ch. 513, § 17; reenacted without change, Laws, 2005, ch. 492, § 17; reenacted without change, Laws, 2010, ch. 487, § 17; reenacted without

change, Laws, 2011, ch. 525, § 17; Laws, 2013, ch. 350, § 10; Laws, 2013, ch. 523, § 17, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 10 of ch. 350, Laws of 2013, effective from and after July 1, 2013 (approved March 18, 2013), amended this section. Section 17 of ch. 523, Laws of 2013, effective from and after July 1, 2013 (approved April 23, 2013), also amended this section. As set out above, this section reflects the language of Section 17 of ch. 523, Laws of 2013, which contains language that specifically provides that it supersedes § 73-7-23 as amended by ch. 350, Laws of 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Cross References — Examination and licensing of instructors, see § 73-7-15.

Revocation, suspension or refusal of licenses or certificates of registration, see § 73-7-27.

Fees, see § 73-7-29.

§ 73-7-25. Demonstrator's permit [Repealed effective July 1, 2021].

Every demonstrator in the field of cosmetology shall, before making demonstrations in a salon or school, apply for and obtain a permit from the board. For such permit, which shall be for one (1) year, the required fee shall be paid to the board. This section shall be construed to apply to demonstrators in salons and schools.

SOURCES: Codes, 1942, § 8915-13; Laws, 1948, ch. 367, § 13; Laws, 1964, ch. 450, § 12; Laws, 1979, ch. 444, § 5; Laws, 1982, ch. 448, § 6; reenacted, Laws, 1983, ch. 487, § 13; Laws, 1987, ch. 516, § 14; reenacted, Laws, 1991, ch. 553, § 18; reenacted, Laws, 1993, ch. 596, § 17; reenacted, Laws, 1995, ch. 383, § 18; reenacted and amended, Laws, 1997, ch. 513, § 18; reenacted without change, Laws, 2005, ch. 492, § 18; reenacted without change, Laws, 2010, ch. 487, § 18; reenacted without change, Laws, 2011, ch. 525, § 18; reenacted without change, Laws, 2013, ch. 523, § 18, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Cross References — Fees, see § 73-7-29.

Penalties for violations, see § 73-7-37.

RESEARCH REFERENCES

ALR. Liability of cosmetology school for injury to patron. 81 A.L.R.4th 444.

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

CJS. 53 C.J.S., Licenses §§ 70-72.

§ 73-7-27. Filing, investigation and disposition of complaints against licensees; revocation, suspension or refusal of licenses or certificates of registration; notice and hearing; rendition of written decision; appeal from from decision of board; imposition of fines by board [Repealed effective July 1, 2021].

(1) Any complaint may be filed with the board by a member or agent of the board or by any person charging any licensee of the board with the commission of any of the offenses enumerated in subsection (2) of this section. Such complaint shall be in writing, signed by the accuser or accusers, and verified under oath, and such complaints shall be investigated as set forth in Section 73-7-7. If, after the investigation, the board through its administrative review agents determines that there is not substantial justification to believe that the accused licensee has committed any of the offenses enumerated, it may dismiss the complaint or may prepare a formal complaint proceeding against the licensee as hereinafter provided. When used with reference to any complaint filed against a licensee herein, the term "not substantial justification" means a complaint that is frivolous, groundless in fact or law, or vexatious, as determined by unanimous vote of the board. In the event of a dismissal, the person filing the accusation and the accused licensee shall be given written notice of the board's determination. If the board determines there is reasonable cause to believe the accused has committed any of those offenses, the secretary of the board shall give written notice of such determination to the accused licensee and set a day for a hearing as provided in subsection (3) of this section.

(2) The board shall have the power to revoke, suspend or refuse to issue or renew any license or certificate provided for in this chapter, and to fine, place on probation and/or otherwise discipline a student or licensee or holder of a certificate, upon proof that such person: (a) has not complied with or has violated any of the rules and regulations promulgated by the board; (b) has not complied with or has violated any of the sections of this chapter; (c) has committed fraud or dishonest conduct in the taking of the examination herein provided for; (d) has been convicted of a felony; (e) has committed grossly unprofessional or dishonest conduct; (f) is addicted to the excessive use of intoxicating liquors or to the use of drugs to such an extent as to render him or her unfit to practice in any of the practices or occupations set forth in this chapter; (g) has advertised by means of knowingly false or deceptive statements; or (h) has failed to display the license or certificate issued to him or her as provided for in this chapter; or (i) has been convicted of violating any of the provisions of this chapter. A conviction of violating any of the provisions of this chapter shall be grounds for automatic suspension of the license or certificate of such person.

(3) The board shall not revoke, suspend or refuse to issue or renew any license or certificate, or fine, place on probation or otherwise discipline any person in a disciplinary matter except after a hearing of which the applicant or licensee or holder of the certificate affected shall be given at least twenty (20)

days' notice in writing, specifying the reason or reasons for denying the applicant a license or certificate of registration, or in the case of any other disciplinary action, the offense or offenses of which the licensee or holder of a certificate of registration is charged. Such notice may be served by mailing a copy thereof by United States first-class certified mail, postage prepaid, to the last-known residence or business address of such applicant, licensee or holder of a certificate. The hearing on such charges shall be at such time and place as the board may prescribe.

(4) At such hearings, all witnesses shall be sworn by a member of the board, and stenographic notes of the proceedings shall be taken. Any party to the proceedings desiring it shall be furnished with a copy of such stenographic notes upon payment to the board of such fees as it shall prescribe, not exceeding, however, the actual costs of transcription.

(5) The board is hereby authorized and empowered to issue subpoenas for the attendance of witnesses and the production of books and papers. The process issued by the board shall extend to all parts of the state and such process shall be served by any person designated by the board for such service. The person serving such process shall receive such compensation as may be allowed by the board, not to exceed the fee prescribed by law for similar services. All witnesses who shall be subpoenaed, and who shall appear in any proceedings before the board, shall receive the same fees and mileage as allowed by law.

(6) Where in any proceeding before the board any witness shall fail or refuse to attend upon subpoena issued by the board, shall refuse to testify, or shall refuse to produce any books and papers, the production of which is called for by the subpoena, the attendance of such witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of competent jurisdiction of this state, in the same manner as are enforced for the attendance and testimony of witnesses in civil cases in the courts of this state.

(7) The board shall conduct the hearing in an orderly and continuous manner, granting continuances only when the ends of justice may be served. The board shall, within sixty (60) days after conclusion of the hearing, reduce its decision to writing and forward an attested true copy thereof to the last-known residence or business address of such applicant, licensee or holder of a certificate, by way of United States first-class certified mail, postage prepaid. Such applicant, licensee, holder of a certificate, or person aggrieved shall have the right of appeal from an adverse ruling, or order, or decision of the board to the Chancery Court of the First Judicial District of Hinds County, Mississippi, upon forwarding notice of appeal to the board within thirty (30) days after the decision of the board is mailed in the manner here contemplated. An appeal will not be allowed in the event notice of appeal, together with the appeal bond hereinafter required, shall not have been forwarded to the board within the thirty-day period. Appeal shall be to the Chancery Court of the First Judicial District of Hinds County, Mississippi. The appeal shall thereupon be heard in due course by the court which shall review the record and make its determination thereon.

(8) The appellant shall, together with the notice of appeal, forward to and post with the board a satisfactory bond in the amount of Five Hundred Dollars ($500.00) for the payment of any costs which may be adjudged against him.

(9) In the event of an appeal, the court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may, in the discretion of the chancellor, be tried in vacation. If there is an appeal, such appeal may, in the discretion of and on motion to the chancery court, act as a supersedeas. However, any fine imposed by the board under the provisions of this chapter shall not take effect until after the time for appeal has expired, and an appeal of the imposition of such a fine shall act as a supersedeas.

(10) Any fine imposed by the board upon a licensee or holder of a certificate shall be in accordance with the following schedule:

(a) For the first violation, a fine of not less than Fifty Dollars ($50.00) nor more than One Hundred Dollars ($100.00) for each violation.

(b) For the second and each subsequent violation, a fine of not less than One Hundred Dollars ($100.00) nor more than Four Hundred Dollars ($400.00) for each violation.

The power and authority of the board to impose such fines under this section shall not be affected or diminished by any other proceeding, civil or criminal, concerning the same violation or violations.

(11) In addition to the reasons specified in subsection (2) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Codes, 1942, § 8915-14; Laws, 1948, ch. 367, § 14; Laws, 1964, ch. 450, § 13; reenacted without change, Laws, 1983, ch. 487, § 14; Laws, 1991, ch. 553, § 19; reenacted, Laws, 1993, ch. 596, § 18; reenacted, Laws, 1995, ch. 383, § 19; Laws, 1996, ch. 507, § 33; reenacted and amended, Laws, 1997, ch. 513, § 19; reenacted without change, Laws, 2005, ch. 492, § 19; reenacted without change, Laws, 2010, ch. 487, § 19; reenacted and amended, Laws, 2011, ch. 525, § 19; Laws, 2013, ch. 523, § 19, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.
Cross References — Witness fees generally, see § 25-7-47.

Conduct of hearings regarding violations of chapter or rules and regulations discovered during investigations, see § 73-7-7.

Fees, see § 73-7-29.

Penalties for violations, see § 73-7-37.

Suspension of State-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

JUDICIAL DECISIONS

1. In general.

Suspension of license to operate school of cosmetology obtained by misrepresentations, upheld. Geiger v. Mississippi State Bd. of Cosmetology, 246 Miss. 542, 151 So. 2d 189 (1963).

RESEARCH REFERENCES

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 11 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

5 Am. Jur. Pl & Pr Forms (Rev), Barbers and Cosmetologists, Forms 1 et seq. (licensing and regulation).

5 Am. Jur. Pl & Pr Forms (Rev), Barbers and Cosmetologists, Form 4.

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-7-29. Fees [Repealed effective July 1, 2021].

The State Board of Cosmetology shall assess fees in the following amounts and for the following purposes:

(a) Initial license/renewal for cosmetologist, manicurist, esthetician, or wig specialist	$ 50.00
(b) Instructor initial license/renewal	80.00
(c) Master cosmetologist license/renewal	70.00
(d) Delinquent renewal penalty — cosmetologist, manicurist, esthetician, wig specialist and instructor	50.00

There shall be no renewal fee for any licensee seventy (70) years of age or older.

(e) Salon application and initial inspection	85.00
(f) Salon reinspection	35.00
(g) Salon change of ownership or location, or both	85.00
(h) Salon renewal	60.00
(i) Salon delinquent renewal penalty	50.00
(j) Application and initial inspection for a new school	300.00
(k) New school reinspection	100.00
(*l*) School change of ownership	300.00
(m) School relocation	150.00
(n) School renewal	75.00
(o) School delinquent renewal penalty	100.00
(p) Duplicate license	10.00
(q) Penalty for insufficient fund checks	20.00

(r) Affidavit processing 15.00

The State Board of Cosmetology may charge additional fees for services which the board deems appropriate to carry out its intent and purpose. These additional fees shall not exceed the cost of rendering the service.

The board is fully authorized to make refunds of any deposits received by the board for services which are not rendered. Refunds will automatically be made on overpayment of fees. Refunds will be made on under payments by written requests from applicants. If no request for refund is made within sixty (60) days, the fees will be forfeited.

SOURCES: Codes, 1942, § 8915-15; Laws, 1948, ch. 367, § 15; Laws, 1960, ch. 384, § 7; Laws, 1964, ch. 450, § 14; Laws, 1979, ch. 444, § 6; reenacted, Laws, 1983, ch. 487, § 15; Laws, 1987, ch. 516, § 15; Laws, 1990, ch. 346, § 1; reenacted, Laws, 1991, ch. 553, § 20; reenacted, Laws, 1993, ch. 596, § 19; reenacted, Laws, 1995, ch. 383, § 20; reenacted and amended, Laws, 1997, ch. 513, § 20; Laws, 2000, ch. 485, § 7; reenacted without change, Laws, 2005, ch. 492, § 20; reenacted without change, Laws, 2010, ch. 487, § 20; reenacted and amended, Laws, 2011, ch. 525, § 20; reenacted without change, Laws, 2013, ch. 523, § 20, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Cross References — Delinquency fee in addition to an annual renewal fee, see § 73-7-19.

ATTORNEY GENERAL OPINIONS

Fees paid to the board for a license application or renewal where the license has not been issued may not be refunded. Luckett, Dec. 19, 1997, A.G. Op. #97-0785.

§ 73-7-31. Exceptions to applicability of chapter [Repealed effective July 1, 2021].

Nothing in this chapter shall apply to:

(a) Hairdressing, manicuring or facial treatments given in the home to members of family or friends for which no charge is made.

(b) Persons whose practice is limited to the application of cosmetic products to another person in connection with the sale, or attempted sale, of such products at retail, without compensation from such other person other than the regular retail price of such merchandise.

(c) Barbers, and nothing in this chapter shall affect the jurisdiction of the State Board of Barber Examiners.

(d) Persons engaged in the practice of hair braiding as defined in Section 73-7-71 who have completed the self-test part of the brochure on infection control techniques prepared by the State Department of Health and who keep the brochure and completed self-test available at the location at which the person is engaged in hair braiding.

SOURCES: Codes, 1942, § 8915-16; Laws, 1948, ch. 367, § 16; Laws, 1964, ch. 450, § 15; Laws, 1972, ch. 460, § 1; reenacted, Laws, 1983, ch. 487, § 16; Laws, 1987, ch. 516, § 16; Laws, 1988, ch. 537, § 3; reenacted, Laws, 1991, ch. 553,

§ 21; reenacted, Laws, 1993, ch. 596, § 20; reenacted, Laws, 1995, ch. 383, § 21; reenacted without change, Laws, 1997, ch. 513, § 21; reenacted and amended, Laws, 2005, ch. 492, § 21; Laws, 2008, ch. 509, § 1; reenacted without change, Laws, 2010, ch. 487, § 21; reenacted without change, Laws, 2011, ch. 525, § 21; reenacted without change, Laws, 2013, ch. 523, § 21, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Cross References — Establishment of procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

Barbering generally, see §§ 73-5-1 et seq.

Injunctions to restrain unlawful practice of profession, see § 73-51-1.

RESEARCH REFERENCES

Am Jur. 11 Am. Jur. 2d, Barbers and Cosmetologists §§ 1, 2 et seq.

§ 73-7-33. Sanitation rules and regulations [Repealed effective July 1, 2021].

In addition to the rules and regulations that may be prescribed and promulgated by the board under authority of this chapter, the following rules and regulations shall be observed:

Every establishment must be kept sanitary, including all utensils and equipment, must be well ventilated and properly lighted. Each salon must be provided with hot and cold running water. Electrical appliances must be properly installed and grounded.

Cosmetologists shall be allowed to wear any type of clothing or apparel while at work as long as such clothing or apparel is sanitary.

Cosmetologists shall be allowed to use any type of hair roller as long as they do so in a sanitary manner.

Persons with a communicable disease or parasitic infection that is medically recognized to be a direct threat of transmission by the type of contact that practitioners have with clients are not to be permitted to practice in an establishment until their condition is no longer communicable under those circumstances. No work shall be performed on any patron having a visible disease unless the patron shall produce a certificate from a practicing physician stating that the patron is free from infectious, contagious or communicable disease. A cosmetologist's license does not authorize such person to treat or prescribe for an infectious, contagious or any other disease.

A home salon must have a solid wall to the ceiling with an outside entrance, or if a door exists between the salon and the remainder of the house, the door must be kept closed at all times while service is being rendered.

SOURCES: Codes, 1942, § 8915-17; Laws, 1948, ch. 367, § 17; Laws, 1964, ch. 450, § 16; Laws, 1979, ch. 425; reenacted, Laws, 1983, ch. 487, § 17; reenacted, Laws, 1991, ch. 553, § 22; reenacted, Laws, 1993, ch. 596, § 21; reenacted, Laws, 1995, ch. 383, § 22; reenacted and amended, Laws, 1997, ch. 513, § 22;

reenacted without change, Laws, 2005, ch. 492, § 22; reenacted without change, Laws, 2010, ch. 487, § 22; reenacted without change, Laws, 2011, ch. 525, § 22; Laws, 2013, ch. 523, § 22, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.
Cross References — Penalties for violations, see § 73-7-37.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statute or ordinance regulating beauty shops or beauty culture schools. 56 A.L.R.2d 879.

Liability of cosmetology school for injury to patron. 81 A.L.R.4th 444.

§ 73-7-35. Limitations on location of professional practice [Repealed effective July 1, 2021].

(1) No person licensed pursuant to this chapter shall practice his or her profession except within the physical confines of a salon possessing and displaying a properly executed license issued pursuant to Section 73-7-17. However, this requirement shall not prevent a person from rendering his or her services to any person who may be confined to his or her home, a hospital, or other place as a result of illness, and cosmetologists shall be permitted to render their services to deceased persons away from their salons.

(2) No salon owner licensed pursuant to this chapter shall allow a cosmetologist, esthetician, or manicurist to practice his/her profession in the salon without possessing a valid license issued pursuant to this chapter.

SOURCES: Codes, 1942, § 8915-17.5; Laws, 1964, ch. 450, § 17; reenacted without change, Laws, 1983, ch. 487, § 18; Laws, 1987, ch. 516, § 17; Laws, 1988, ch. 537, § 2; reenacted, Laws, 1991, ch. 553, § 23; reenacted, Laws, 1993, ch. 596, § 22; reenacted, Laws, 1995, ch. 383, § 23; reenacted without change, Laws, 1997, ch. 513, § 23; reenacted without change, Laws, 2005, ch. 492, § 23; reenacted without change, Laws, 2010, ch. 487, § 23; reenacted without change, Laws, 2011, ch. 525, § 23; Laws, 2013, ch. 523, § 23, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.
Cross References — Penalties for violations, see § 73-7-37.

§ 73-7-37. Penalty for violations of chapter; proceedings for orders enjoining violations or enforcing compliance with chapter; violations of court orders [Repealed effective July 1, 2021].

(1) The violation of any of the provisions of this chapter, including the use of fraudulent statements to obtain any benefits or privileges under this chapter or practicing one (1) of these professions without a license, shall constitute a misdemeanor, punishable in any court of competent jurisdiction at the seat of government, and any person or firm convicted of the violation of any of the

provisions of this chapter shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00). The court shall not be authorized to suspend or suspend the execution of the fine required under this section.

(2) If any person, firm or corporation violates any of the provisions of this chapter, the secretary of the board, upon direction of a majority of the board and in the name of the board, acting through the Attorney General or an attorney employed by the board, shall apply in the Chancery Court of the First Judicial District of Hinds County, Mississippi, for an order enjoining such violation or for an order enforcing compliance with the provisions of this chapter. Upon the filing of a verified petition in the chancery court and after notice as provided under the Mississippi Rules of Civil Procedure, such court, if satisfied by the sworn petition, by affidavit or otherwise, that such person has violated any of the provisions of this chapter, may issue an injunction without notice or bond, enjoining such continued violation and such injunction shall remain in force and effect until a final hearing. If at such hearing it is established that such person has violated or is violating any of the provisions of this chapter, the court may enter a decree permanently enjoining such violation or enforcing compliance with this chapter. In addition, the court may enter a judgment against such person for attorney's fees, court costs and the actual costs incurred by the board in investigating the actions of such person for which the board brought the suit for an injunction. In case of violation of any decree issued in compliance with this subsection, the court may punish the offender for contempt of court and the court shall proceed as in other cases.

(3) The proceedings in this section shall be in addition to and not in lieu of the other remedies and penalties provided in this chapter.

SOURCES: Codes, 1942, § 8915-18; Laws, 1948, ch. 367, § 18; Laws, 1964, ch. 450, § 18; reenacted without change, Laws, 1983, ch. 487, § 19; Laws, 1991, ch. 553, § 24; reenacted, Laws, 1993, ch. 596, § 23; reenacted, Laws, 1995, ch. 383, § 24; reenacted and amended, Laws, 1997, ch. 513, § 24; reenacted without change, Laws, 2005, ch. 492, § 24; reenacted without change, Laws, 2010, ch. 487, § 24; reenacted without change, Laws, 2011, ch. 525, § 24; Laws, 2013, ch. 523, § 24, eff from and after July 1, 2013.

Editor's Note — For the repeal date of this section, see § 73-7-63.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Products liability: hair straighteners and relaxants. 84 A.L.R.4th 1090.

WIG SPECIALISTS AND WIG SALONS

SEC.
73-7-51 through 73-7-61. Repealed.
73-7-63. Repeal of Sections 73-7-1 through 73-7-37.

§§ 73-7-51 through 73-7-61. Repealed.

Repealed by Laws of 2013, ch. 523, § 25, effective from and after July 1, 2013.

§ 73-7-51. [Codes, 1942, § 8915-21; Laws, 1972, ch. 460, § 2; reenacted, Laws, 1983, ch. 487, § 20; reenacted, Laws, 1991, ch. 553, § 25; reenacted, Laws, 1993, ch. 596, § 24; reenacted, Laws, 1995, ch. 383, § 25; reenacted without change, Laws, 1997, ch. 513, § 25; reenacted without change, Laws, 2005, ch. 492, § 25; reenacted without change, Laws, 2010, ch. 487, § 25; reenacted without change, Laws, 2011, ch. 525, § 25, eff from and after July 1, 2011.]

§ 73-7-53. [Codes, 1942, § 8915-22; Laws, 1972, ch. 460, § 3; Laws, 1982, ch. 448, § 7; reenacted, Laws, 1983, ch. 487, § 21; reenacted, Laws, 1991, ch. 553, § 26; reenacted, Laws, 1993, ch. 596, § 25; reenacted, Laws, 1995, ch. 383, § 26; reenacted without change, Laws, 1997, ch. 513, § 26; Laws, 2000, ch. 485, § 8; reenacted without change, Laws, 2005, ch. 492, § 26; reenacted without change, Laws, 2010, ch. 487, § 26; reenacted and amended, Laws, 2011, ch. 525, § 26, eff from and after July 1, 2011.]

§ 73-7-55. [Codes, 1942, § 8915-22; Laws, 1972, ch. 460, § 3; reenacted, Laws, 1983, ch. 487, § 22; reenacted, Laws, 1991, ch. 553, § 27; reenacted, Laws, 1993, ch. 596, § 26; reenacted, Laws, 1995, ch. 383, § 27; reenacted without change, Laws, 1997, ch. 513, § 27, ; reenacted without change, Laws, 2005, ch. 492, § 27; reenacted without change, Laws, 2010, ch. 487, § 27; reenacted without change, Laws, 2011, ch. 525, § 27, eff from and after July 1, 2011.]

§ 73-7-57. [Codes, 1942, § 8915-23; Laws, 1972, ch. 460, § 4; Laws, 1979, ch. 444, § 7; reenacted, Laws, 1983, ch. 487, § 23; Laws, 1987, ch. 516, § 18; reenacted, Laws, 1991, ch. 553, § 28; reenacted, Laws, 1993, ch. 596, § 27; reenacted, Laws, 1995, ch. 383, § 28; reenacted without change, Laws, 1997, ch. 513, § 28; reenacted without change, Laws, 2005, ch. 492, § 28; reenacted without change, Laws, 2010, ch. 487, § 28; reenacted without change, Laws, 2011, ch. 525, § 28, eff from and after July 1, 2011.]

§ 73-7-59. [Codes, 1942, § 8915-25; Laws, 1972, ch. 460, § 6; reenacted, Laws, 1983, ch. 487, § 24; reenacted, Laws, 1991, ch. 553, § 29; reenacted, Laws, 1993, ch. 596, § 28; reenacted, Laws, 1995, ch. 383, § 29; reenacted without change, Laws, 1997, ch. 513, § 29; Laws, 2000, ch. 485, § 9; reenacted without change, Laws, 2005, ch. 492, § 29; reenacted without change, Laws, 2010, ch. 487, § 29; reenacted without change, Laws, 2011, ch. 525, § 29, eff from and after July 1, 2011.]

§ 73-7-61. [Codes, 1942, § 8915-24; Laws, 1972, ch. 460, § 5; reenacted, Laws, 1983, ch. 487, § 25; reenacted, Laws, 1991, ch. 553, § 30; reenacted, Laws, 1993, ch. 596, § 29; reenacted, Laws, 1995, ch. 383, § 30; reenacted without change, Laws, 1997, ch. 513, § 30; reenacted without change, Laws, 2005, ch. 492, § 30; reenacted without change, Laws, 2010, ch. 487, § 30; reenacted without change, Laws, 2011, ch. 525, § 30, eff from and after July 1, 2011.]

Editor's Note — Former § 73-7-51 required certain persons to obtain wig specialist licenses or wig salon certificates of registration.

Former § 73-7-53 related to requirements for wig specialist licenses.

Former § 73-7-55 allowed registered wig specialists desiring to qualify for certificate of registration as cosmetologist to apply 300 hours acquired in training to be a wig specialist to the hours required to be eligible for cosmetologist's examination.

Former § 73-7-57 related to the licensing of wig salons.

Former § 73-7-59 exempted cosmetologists from certain provisions of former §§ 73-7-51 through 73-7-61.

Former § 73-7-61 exempted retail sales of wigs or hairpieces from requirements of §§ 73-7-51 through 73-7-61.

§ 73-7-63. Repeal of Sections 73-7-1 through 73-7-37.

Sections 73-7-1 through 73-7-37, which create the State Board of Cosmetology and prescribe its duties and powers, shall stand repealed as of July 1, 2021.

SOURCES: Laws, 1979, ch. 301, § 23; ch. 357, § 9; Laws, 1983, ch. 487, § 26; Laws, 1991, ch. 553, § 31; Laws, 1993, ch. 596, § 1; reenacted, Laws, 1995, ch. 383, § 31; Laws, 1997, ch. 513, § 31; Laws, 2001, ch. 515, § 1; Laws, 2005, ch. 492, § 31; Laws, 2010, ch. 487, § 31; Laws, 2011, ch. 525, § 31; Laws, 2013, ch. 523, § 27; Laws, 2017, ch. 380, § 5, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment extended the date of the repealer for §§ 73-7-1 through 73-7-37 by substituting "July 1, 2021" for "July 1, 2017."

Cross References — Mississippi Agency Review Law, see § 5-9-13.

HAIR BRAIDING

SEC.	
73-7-71.	"Hair braiding" defined; persons practicing hair braiding for compensation required to register with Department of Health; department not authorized to license or regulate the practice of hair braiding; department directed to develop brochure containing information about infection control techniques; brochure to include self-test questionnaire; persons engaging in hair braiding for compensation may be exempt from cosmetology licensing by completing self-test and keeping it at place of business; department may conduct inspections of premises to determine whether self-test is available on site; section inapplicable to licensed cosmetologists, barbers, or wig specialists [Repealed effective July 1, 2020].

§ 73-7-71. "Hair braiding" defined; persons practicing hair braiding for compensation required to register with Department of Health; department not authorized to license or regulate the practice of hair braiding; department directed to develop brochure containing information about infection control techniques; brochure to include self-test questionnaire; persons engaging in hair braiding for compensation may be exempt from cosmetology licensing by completing self-test and keeping it at place of business; department may conduct inspections of premises to determine whether self-test is available on site; section inapplicable to licensed cosmetologists, barbers, or wig specialists [Repealed effective July 1, 2020].

(1) For the purpose of this section, the term "hair braiding" means the use of techniques that result in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking or braiding of the hair by hand or mechanical device, but does not include the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl or alter the structure of the hair.

(2) No person shall engage in hair braiding for compensation in the State of Mississippi without first registering with the State Department of Health. The department may charge each registrant a fee of not more than Twenty-five Dollars ($25.00) to cover the department's costs in registering the person and providing the person with the brochure prepared under subsection (3) of this section, which fee shall be uniform for all registrants. Any increase in the fee charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65. The purpose of this registration is only to maintain a listing of those persons who engage in hair braiding for compensation in the state, and does not authorize the department to license or regulate the practice of hair braiding in the state, except as provided in subsection (4) of this section.

(3) The State Department of Health shall develop and prepare a brochure containing information about infection control techniques that are appropriate for hair braiding in or outside of a salon setting. The brochure shall be made available through the department's website or by mail, upon request, for a fee to cover the department's mailing costs. The brochure shall contain a self-test with questions on the information contained in the brochure. For a person engaged in hair braiding to be exempt from the cosmetology licensure law, Section 73-7-1 et seq., the person shall complete the self-test part of the brochure and keep the brochure and completed self-test available at the location at which the person is engaged in hair braiding.

(4) Representatives of the department may visit any facility or premises in which hair braiding is performed at any time during business hours to determine if the brochure and completed self-test are available at the facility or premises.

(5) This section does not apply to cosmetologists, or barbers licensed to practice in Mississippi in their respective fields.

SOURCES: Laws, 2005, ch. 492, § 32; Laws, 2008, ch. 509, § 2; Laws, 2013, ch. 523, § 26; Laws, 2016, ch. 510, § 42, eff from and after July 1, 2016.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this second sentence of (2). The reference to "subsection (2)" was changed to "subsection (3)." The Joint Committee ratified the correction at its August 5, 2008 meeting.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added the next-to-last sentence of (2).

ATTORNEY GENERAL OPINIONS

Arranging hair with hair pins or accessories, without shampooing, cutting, curling or otherwise styling the hair, falls within the statutory definition of "hair braiding." Lunsford, July 8, 2005, A.G. Op. 05-0319.

A person engaging in "cosmetology" or "wigology" activities, as those terms are defined in Section 73-7-2, is subject to the jurisdiction of the Mississippi State Board of Cosmetology with regard to those activities, even if the person is also engaged in "hair braiding" activities. Lunsford, July 8, 2005, A.G. Op. 05-0319.

CHAPTER 9

Dentists

General Licensing Requirements 73-9-1
Mississippi Disabled Dentist Law 73-9-101

GENERAL LICENSING REQUIREMENTS

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73-9-57.	Penalties for practicing illegally.
73-9-59.	Prosecuting officers under duty to act.
73-9-61.	Denial of issuance or renewal, revocation, or suspension of license for cause; monetary penalty in lieu of denial, revocation, or suspension; other disciplinary measures [Paragraph (1)(r) repealed effective July 1, 2020].
73-9-63.	Complaint filed against dentist or dental hygienist; hearing.

73-9-65. Accused entitled to notice, hearing and appeal; practice of dentistry or dental hygiene pending appeal.
73-9-67. Repealed.

§ 73-9-1. License required.

Every person who desires to practice dentistry or dental hygiene in this state must obtain a license to do so as hereinafter provided; but this section shall not apply to dentists or dental hygienists now holding permanent licenses to practice provided the same have been recorded as required by law.

SOURCES: Codes, 1930, § 4294; 1942, § 8746; Laws, 1928, ch. 131; reenacted without change, Laws, 1983, ch. 488, § 1; reenacted, Laws, 1991, ch. 483, § 1; reenacted without change, Laws, 1997, ch. 541, § 1; reenacted without change, Laws, 2002, ch. 524, § 1, eff from and after June 30, 2002.

Cross References — Board to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health care providers, see § 41-34-3.

Requirement that Board establish procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Participation by dentists in insurance policies, plans or contracts providing for dental services, see § 83-41-209.

Applicability of definitions of dental illness or injury appearing in this chapter to provisions relative to dental care benefits in health insurance policies and employee benefit plans, see § 83-51-1.

JUDICIAL DECISIONS

1. In general.

De facto prohibition of public practice of denturism under auspices of Mississippi Dental Practice Act (§§ 73-9-1 et seq.) does not violate due process clause of U.S. Constitution notwithstanding claims that Act harms public by limiting supply of dentures and artificially maintaining high prices, that limitation of supply at high price effectively excludes many elderly persons from purchasing dentures, and that denturists are capable of providing dentures without harm to public at lower than current costs, since, even if such contentions are true, they do not negate every possible reason supporting validity of statutes so as to demonstrate that prohibition is not rationally related to legitimate state purpose. Rayborn v. Mississippi State Bd. of Dental Exmrs., 601 F. Supp. 537 (S.D. Miss. 1985), aff'd, 776 F.2d 530 (5th Cir. 1985).

RESEARCH REFERENCES

ALR. Constitutionality, construction, and application of statute relating to dental hygienists. 11 A.L.R.2d 724.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry or medicine from owning, maintaining, or operating as office therefor. 20 A.L.R.2d 808.

Regulation of prosthetic dentistry. 45 A.L.R.2d 1243.

Liability of dentist to patient. 83

A.L.R.2d 7.

Recovery, and measure and element of damages, in action against dentist for breach of contract to achieve particular result or cure. 11 A.L.R.4th 748.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 26 et seq.

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Form 35.

CJS. 70 C.J.S., Physicians, Surgeons and Other Health-Care Providers §§ 11 et seq.

§ 73-9-3. "Dentistry" defined.

"Dentistry" is defined as the evaluation, diagnosis, prevention and/or treatment (nonsurgical, surgical or related procedures) of diseases, disorders and/or conditions of the oral cavity, maxillofacial area and/or the adjacent and associated structures and their impact on the human body; provided by a dentist, within the scope of his or her education, training and experience, in accordance with the ethics of the profession and applicable law, provided that nothing in this section shall be so construed as to prevent:

(a) The practice of his or her profession by a regularly licensed and registered physician under the laws of this state unless he or she practices dentistry as a specialty; or

(b) The performance of mechanical work upon inanimate objects by persons working in dental offices under their supervision; or

(c) The operation of a dental laboratory and taking work by written work authorization from regularly licensed and registered dentists as provided for elsewhere in this chapter; or

(d) Dentists from outside the state from giving educational clinics or demonstrations before a dental society, convention or association; or

(e) Licensed dentists from outside the state from being called into Mississippi by licensed dentists of this state for consultative or operative purposes when the consultative or operative purposes have been authorized or approved by the Board of Dental Examiners for specified periods of time or as provided for by rules and regulations set forth by the board; or

(f) Applicants for a license to practice dentistry or dental hygiene in this state from working during an examination by and under the supervision and direction of the Board of Dental Examiners; or

(g) The practice of dentistry or of dental hygiene by students under the supervision of faculty in any dental school, college, or dental department of any school, college or university, or school of dental hygiene recognized by the board; or

(h) Dental or dental hygiene students enrolled in accredited dental or dental hygiene schools from participating in off-site training recognized and approved by the board, but those activities shall not be carried on for profit; or

(i) A regularly licensed and registered dentist from the delegation of procedures to a regularly licensed and registered dental hygienist or other competent dental auxiliary personnel while acting under the direct supervision and full responsibility of the dentist except as follows: Those procedures that require the professional judgment and skill of a dentist such as diagnosis, treatment planning, surgical procedures involving hard or soft tissues, or any intra-oral procedure of an irreversible nature that could result in injury to the patient. However, the dentist may delegate the removal of calcareous deposits only to a regularly licensed and registered dental hygienist as regulated by the State Board of Dental Examiners.

All dentists and dental hygienists serving as faculty, as provided for in paragraphs (g) and (h) of this section, shall be required to be licensed by the Mississippi State Board of Dental Examiners.

SOURCES: Codes, 1930, § 4295; 1942, § 8747; Laws, 1928, ch. 131; Laws, 1970, ch. 418, § 1; reenacted without change, Laws, 1983, ch. 488, § 2; Laws, 1991, ch. 483, § 2; reenacted without change, Laws, 1997, ch. 541, § 2; Laws, 2000, ch. 560, § 1; reenacted and amended, Laws, 2002, ch. 524, § 2, eff from and after June 30, 2002.

Cross References — Authority of board to make rules and regulations by which clinical facilities within institutions can be approved for practice of dentistry by unlicensed persons therein, see § 73-9-13.

Issuance of special licenses, certificates or permits for teaching or dental practice in limited categories, see § 73-9-28.

Applicability of definitions of dental illness or injury appearing in this chapter to provisions relative to dental care benefits in health insurance policies and employee benefit plans, see § 83-51-1.

JUDICIAL DECISIONS

1. In general.

Substantial evidence supported the decision by the Mississippi State Board of Dental Examiners that a dentist violated a number of the conditions set forth in a consent agreement by practicing dentistry during a period when the dentist was suspended from the practice of dentistry because the dentist numbed a patient and removed and inserted a crown, which constituted the practice of dentistry. Holt v. Miss. State Bd. of Dental Exam'rs, 131 So. 3d 1271 (Miss. Ct. App. 2014).

The simple act of putting a partial bridge with one artificial tooth into a patient's mouth did not constitute the unlawful practice of dentistry, since such act did not amount to a correction of "malposition or irregularities of the teeth or jaws" in violation of § 73-9-3. McKlemurry v. State, 417 So. 2d 554 (Miss. 1982).

ATTORNEY GENERAL OPINIONS

Subsection requires that delegation of the removal of calcareous deposits can only be to other dentists or to licensed and registered hygienists; such procedures may not be delegated to less qualified personnel. Howell, April 14, 2000, A.G. Op. #2000-0162.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers § 6.

11 Am. Jur. Proof of Facts 3d 1, Dental Injuries.

CJS. 70 C.J.S., Physicians, Surgeons and Other Health-Care Providers §§ 1-3, 13, 165, 167-170, 172-174, 178, 179.

§ 73-9-5. "Dental hygiene" defined.

(1) For the purpose of this chapter, a dental hygienist shall be an individual who has completed an accredited dental hygiene education program, passed the national dental hygiene board and is licensed by the State Board of Dental Examiners to provide, as an auxiliary to the dentist, preventive care services including, but not limited to, scaling and polishing. In fulfilling these services, dental hygienists provide treatment that helps to prevent oral disease such as dental caries and periodontal disease and for educating patients in prevention of these and other dental problems.

(2) The work of dental hygienists and dental assistants while working in the office of a regularly licensed and registered dentist shall at all times be under the direct supervision of the dentist. Dental hygienists in the employ of the State Board of Health or public school boards shall be limited to only performing oral hygiene instruction and screening when under the general supervision and direction of regularly licensed and registered dentists. Dental hygienists recognized by the Board of Dental Examiners when making public demonstrations of dental hygiene for educational purposes shall be under the general supervision and direction of regularly licensed and registered dentists.

(3) The Board of Dental Examiners may prohibit any dental hygienist or other auxiliary personnel from rendering service that it feels is not in the best interest of the public welfare.

SOURCES: Codes, 1930, § 4296; 1942, § 8748; Laws, 1928, ch. 131; Laws, 1966, ch. 464, § 1; Laws, 1970, ch. 418, § 2; reenacted without change, Laws, 1983, ch. 488, § 3; reenacted, Laws, 1991, ch. 483, § 3; reenacted without change, Laws, 1997, ch. 541, § 3; Laws, 2000, ch. 560, § 2; reenacted without change, Laws, 2002, ch. 524, § 3, eff from and after June 30, 2002.

Cross References — Applicability of definitions of dental illness or injury appearing in this chapter to provisions relative to dental care benefits in health insurance policies and employee benefit plans, see § 83-51-1.

§ 73-9-7. State board of dental examiners; dental districts; nominations for appointment.

(1) The duties of the Mississippi State Board of Dental Examiners, or the board, shall be to carry out the purposes and provisions of the laws pertaining to the practice of dentistry and dental hygiene. The Mississippi State Board of Dental Examiners is continued and reconstructed as follows: The board shall consist of seven (7) licensed and actively practicing dentists and one (1) licensed and actively practicing dental hygienist, each a graduate of an accredited college of dentistry or dental hygiene, as appropriate, and practicing within the State of Mississippi for a period of five (5) or more years next preceding his or her appointment. No dentist or dental hygienist shall be

eligible for appointment who can be construed to be in violation of current state ethics laws and regulations.

(2) The members of the board appointed and serving before July 1, 2002, shall complete their current four-year appointments. Upon completion of those appointments, the term of each of the successor dentist and dental hygienist appointees provided for in this section shall be for a period of six (6) years and shall terminate on and after June 30 of the sixth year.

(3) The Governor shall appoint one (1) dentist member of the board from the state at large. Upon expiration of the term of office of any of the six (6) members of the board who are appointed from districts, the Governor shall appoint his successor from a list of names to be submitted as set out in this subsection. All appointments to the board shall be made with the advice and consent of the Senate.

The board shall poll all licensed dentists in the state by dental district as follows:

Dental District One: Alcorn, Benton, Calhoun, Chickasaw, Choctaw, Clay, Itawamba, Lafayette, Lee, Lowndes, Marshall, Monroe, Oktibbeha, Pontotoc, Prentiss, Tippah, Tishomingo, Union, Webster;

Dental District Two: Bolivar, Carroll, Coahoma, DeSoto, Grenada, Holmes, Humphreys, Issaquena, Leflore, Montgomery, Panola, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tunica, Washington, Yalobusha, Yazoo;

Dental District Three: Attala, Clarke, Covington, Forrest, Jasper, Jones, Kemper, Lamar, Lauderdale, Leake, Neshoba, Newton, Noxubee, Perry, Scott, Smith, Wayne, Winston;

Dental District Four: Hinds, Madison, Rankin, Warren;

Dental District Five: George, Greene, Hancock, Harrison, Jackson, Pearl River, Stone;

Dental District Six: Adams, Amite, Claiborne, Copiah, Franklin, Jefferson Davis, Jefferson, Lawrence, Lincoln, Marion, Pike, Simpson, Walthall, Wilkinson;

and request the submission from each such dental district of three (3) nominations for appointment as members of the board from the six (6) districts. Thirty (30) days after submitting that request, the board shall list all nominations by district according to the number of votes each received. The top three (3) names from each district shall then be considered as a list of names to be submitted to the Governor as referred to above each time a vacancy occurs in one (1) of the six (6) positions appointed from districts or whenever the Governor requests that submission. During the course of each calendar year, the board shall take like polls of all licensed dentists practicing in each dental district, and shall prepare new lists therefrom to be submitted to the Governor, which shall be used in the appointment of the six (6) members appointed from districts.

It is the purpose of this section that no more than one (1) appointee of the six (6) members appointed from districts shall serve from any district at any one (1) time. The names on the lists shall be given priority in accordance with the votes for each nominee. In case of a tie, the persons receiving tie votes shall have their names placed on the list even though it results in more than three (3) names on the list from that district.

(4) The one (1) dental hygienist member shall be appointed by the Governor from the state at large from a list of six (6) dental hygienists, each of whom being the dental hygienist receiving the highest number of votes in his or her individual district from a poll conducted and compiled by the board. The poll shall consist of a blank ballot with three (3) spaces for nomination provided to all licensed dental hygienists in the state. During the course of each calendar year, the board shall take like polls of all licensed dental hygienists practicing in the state, and shall prepare a new list of six (6) dental hygienists, the list to consist of the dental hygienists receiving the highest number of votes in each district, to be submitted to the Governor, which shall be used in the appointment of the dental hygienist member from the state at large. In case of a tie, the persons receiving tie votes shall have their names placed on the list even though it results in more than six (6) names on the list.

The board shall poll all licensed dental hygienists in the state by dental district as that enumerated in subsection (3) of this section.

(5) No dentist or dental hygienist member shall be permitted to serve consecutive terms, but may be nominated for reappointment after the expiration of six (6) years from the conclusion of his or her term. Any vacancy in the board membership shall be filled by the Governor within sixty (60) days by appointment from the list of nominees submitted for the existing term of office. Any appointment made to fill a vacancy or to replace an incumbent holding over shall terminate in accordance with the designation of the particular term and until his or her successor is duly appointed and qualified.

(6) A vote for an individual dentist or dental hygienist in all polls may be counted only once for each ballot no matter how many times the name is listed on the ballot.

(7) The Secretary of State shall, at his discretion, at any time there is sufficient cause, investigate the method and procedure of taking those polls and establishing those lists, and the board shall make available to him all records involved therein; and if the Secretary of State should find cause therefor he may, upon specifying the cause, declare the list invalid, whereupon the board shall follow the procedure set out above to establish a new list. If a vacancy exists and no list is available, the Board of Dental Examiners is to follow the above-described procedure in establishing a new list for the appropriate board appointment.

SOURCES: Codes, 1930, § 4297; 1942, § 8749; Laws, 1928, ch. 131; Laws, 1944, ch. 276, § 1; Laws, 1948, ch. 369; Laws, 1966, ch. 465, § 1; Laws, 1970, ch. 419, § 1; Laws, 1980, ch. 465, § 5; Laws, 1982, ch. 332, § 1; Laws, 1983, ch. 488, § 4; Laws, 1991, ch. 483, § 4; Laws, 1993, ch. 465, § 1; reenacted without change, Laws, 1997, ch. 541, § 4; Laws, 2000, ch. 560, § 3; reenacted and amended, Laws, 2002, ch. 524, § 4, eff from and after June 30, 2002.

Cross References — General powers and duties of governor, see § 7-1-5.
Requirement for registration from board of dental examiners for manufacture, distribution or dispensing of controlled substance, see § 41-29-125.

Duty of board to cooperate in controlling drug traffic, see § 41-29-167.
Encouragement of research on drug abuse, see § 41-29-171.

JUDICIAL DECISIONS

1. In general.

Selection process set forth in § 73-9-7 for members of dental board does not violate due process rights of denturists and dental laboratory technicians allegedly studying to be denturists on ground that process creates board comprised of dentists publicly opposed to public practice of denturism and therefore cannot be fair and impartial to denturists, since disciplinary powers of board are restricted to licensed dentists or licensed dental hygienists and since possibility that board would not conduct fair and impartial hearing in disciplinary proceeding which it might undertake against persons similarly situated with plaintiff denturists and laboratory technicians is meritless "what if" constitutional argument. Rayborn v. Mississippi State Bd. of Dental Exmrs., 601 F. Supp. 537 (S.D. Miss. 1985), aff'd, 776 F.2d 530 (5th Cir. 1985).

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers § 30.

CJS. 70 C.J.S., Physicians, Surgeons and Other Health-Care Providers § 30-39.

§ 73-9-9. Removal of members.

The Governor may remove any member of the board on proof of inefficiency, incompetency, immorality, unprofessional conduct, or continued absence from the state, for failure to perform duties, or for other sufficient cause. Any member who does not attend two (2) consecutive meetings of the board, without just cause, shall be subject to removal by the Governor. The president of the board shall notify the Governor in writing when any such member has failed to attend two (2) consecutive regular meetings. No removal shall be made without first giving the accused an opportunity to be heard in refutation of the charges made against him or her, and he or she shall be entitled to receive a copy of the charges at the time of filing.

SOURCES: Codes, 1930, § 4298; 1942, § 8750; Laws, 1928, ch. 131; Laws, 1983, ch. 488, § 5; reenacted, Laws, 1991, ch. 483, § 5; reenacted without change, Laws, 1997, ch. 541, § 5; reenacted and amended, Laws, 2002, ch. 524, § 5, eff from and after June 30, 2002.

§ 73-9-11. How members shall qualify; quorum.

Each person appointed as a member of the board shall qualify by taking the oath prescribed by the constitution for the state officers, and shall file certificate thereof in the Office of the Secretary of State within fifteen (15) days after execution of such certificate. A majority of the board shall at all times constitute a quorum for the transaction of business.

SOURCES: Codes, 1930, § 4299; 1942, § 8751; Laws, 1928, ch. 131; reenacted without substantive change, Laws, 1983, ch. 488, § 6; reenacted, Laws, 1991, ch. 483, § 6; reenacted without change, Laws, 1997, ch. 541, § 6; reenacted and amended, Laws, 2002, ch. 524, § 6, eff from and after June 30, 2002.

Cross References — Oath of office required of public officers, see Miss. Const. Art. 14, § 268.

§ 73-9-13. Officers of board; duties and powers.

The State Board of Dental Examiners shall each year elect from their number a president, vice president and secretary-treasurer to serve for the coming year and until their successors are qualified. Only dentist members of the board may hold the offices of president and vice president. The board shall have a seal with appropriate wording to be kept at the offices of the board. The secretary and the executive director of the board shall be required to make bond in such sum and with such surety as the board may determine. It shall be the duty of the executive director to keep a complete record of the acts and proceedings of the board and to preserve all papers, documents and correspondence received by the board relating to its duties and office.

The board shall have the following powers and duties:

(a) To carry out the purposes and provisions of the state laws pertaining to dentistry and dental hygiene, and the practice thereof and matters related thereto, particularly Sections 73-9-1 through 73-9-117, together with all amendments and additions thereto.

(b) To regulate the practice of dentistry and dental hygiene and to promulgate reasonable regulations as are necessary or convenient for the protection of the public; however, the board shall not adopt any rule or regulation or impose any requirement regarding the licensing of dentists that conflicts with the prohibitions in Section 73-49-3.

(c) To make rules and regulations by which clinical facilities within institutions, schools, colleges, universities and other agencies may be recognized and approved for the practice of dentistry or of dental hygiene by unlicensed persons therein, as a precondition to their being excepted from the dental practice act and authorized in accordance with Section 73-9-3(g) and (h).

(d) To provide for the enforcement of and to enforce the laws of the State of Mississippi and the rules and regulations of the State Board of Dental Examiners.

(e) To compile at least once each calendar year and to maintain an adequate list of prospective dentist and dental hygienist appointees for approval by the Governor as provided for elsewhere by law.

(f) To issue licenses and permits to applicants when found to be qualified.

(g) To provide for reregistration of all licenses and permits duly issued by the board.

(h) To maintain an up-to-date list of all licensees and permit holders in the state, together with their addresses.

(i) To examine applicants for the practice of dentistry or dental hygiene at least annually.

(j) To issue licenses or duplicates and reregistration/renewal certificates, and to collect and account for fees for same.

(k) To maintain an office adequately staffed insofar as funds are available for the purposes of carrying out the powers and duties of the board.

(*l*) To provide by appropriate rules and regulations, within the provisions of the state laws, for revoking or suspending licenses and permits and a system of fines for lesser penalties.

(m) To prosecute, investigate or initiate prosecution for violations of the laws of the state pertaining to practice of dentistry or dental hygiene, or matters affecting the rights and duties, or related thereto.

(n) To provide by rules for the conduct of as much board business as practicable by mail, which, when so done, shall be and have the same force and effect as if done in a regular meeting duly organized.

(o) To adopt rules and regulations providing for the reasonable regulation of advertising by dentists and dental hygienists.

(p) To employ, in its discretion, a duly licensed attorney to represent the board in individual cases.

(q) To employ, in its discretion, technical and professional personnel to conduct dental office sedation site visits, administer and monitor state board examinations and carry out the powers and duties of the board.

SOURCES: Codes, 1930, § 4300; 1942, § 8752; Laws, 1928, ch. 131; Laws, 1966, ch. 466, § 1; Laws, 1974, ch. 423; Laws, 1983, ch. 488, § 7; Laws, 1991, ch. 483, § 7; Laws, 1993, ch. 465, § 2; reenacted without change, Laws, 1997, ch. 541, § 7; reenacted and amended, Laws, 2002, ch. 524, § 7; Laws, 2015, ch. 461, § 3, eff from and after July 1, 2015.

Cross References — Power of the state board of health to establish programs concerning dental health, see § 41-3-15.

Cooperation of state board of dental examiners with state bureau of narcotics in enforcement of Uniform Controlled Substances Law, see § 41-29-109.

Rules of state board of dental examiners with respect to records and inventories of manufacturers, distributors and dispensers of controlled substances, see § 41-29-133.

Powers and duties of state board of dental examiners in enforcement of Uniformed Controlled Substances Law, see § 41-29-159.

Board to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health care providers, see § 41-34-3.

Requirement that Board establish procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

Affidavit and certificate to be furnished by secretary and board before nonprofit dental service corporation may enter into dental service contracts, see § 83-43-9.

JUDICIAL DECISIONS

1. Authority.

Mississippi State Board of Dental Examiners, the prosecutor, and the Board's investigators did not act beyond the scope of their authority in suspending a dentist's license to practice dentistry for five years. Holt v. Miss. State Bd. of Dental Exam'rs, 131 So. 3d 1271 (Miss. Ct. App. 2014).

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers § 30.

CJS. 70 C.J.S., Physicians, Surgeons and Other Health-Care Providers § 30-39.

§ 73-9-15. Vote of board members.

All board action on rules, regulations and policy matters, such as required to be by vote, shall be by roll call or mail ballot in which the vote of each member shall be recorded whether for, against or otherwise. The dental hygienist member of the board shall only vote on rules, regulations, policy and administrative matters relating to the licensing, qualifications and practice of dental hygiene. The results of the vote shall be a public record except that information pertaining to investigations or examinations shall be confidential unless waived by the persons investigated or examined.

SOURCES: Codes, 1942, § 8752.3; Laws, 1970, ch. 404, § 4; Laws, 1983, ch. 488, § 8; Laws, 1991, ch. 483, § 8; reenacted without change, Laws, 1997, ch. 541, § 8; reenacted and amended, Laws, 2002, ch. 524, § 8, eff from and after June 30, 2002.

§ 73-9-17. Board to implement chapter.

The board is authorized to prescribe and enforce regulations and to perform those acts compatible with and authorized by, either directly or by implication, the laws of the state for the purpose of implementing the provisions of this chapter.

SOURCES: Codes, 1942, § 8752.5; Laws, 1970, ch. 404, § 5; reenacted without change, Laws, 1983, ch. 488, § 9; reenacted, Laws, 1991, ch. 483, § 9; reenacted without change, Laws, 1997, ch. 541, § 9; reenacted without change, Laws, 2002, ch. 524, § 9, eff from and after June 30, 2002.

§ 73-9-19. Registration of dentists.

The State Board of Dental Examiners shall maintain a compiled list of the names and post office addresses of all licensees registered with the board, arranged alphabetically by name and also by the municipalities where their offices are situated. Every licensee shall notify the board within thirty (30) days of any change in address of his or her office or residence. Failure to keep the board apprised of any change of address may result in an administrative penalty to the licensee, the amount of which shall not exceed the amount stipulated in Section 73-9-43. Every licensee shall prominently display his or her current registration, either the original or a notarized copy, in his or her place(s) of business. As used in this section, the word "licensee" shall include all dental and dental hygiene license holders, as well as all holders of permits duly issued by the board.

Except as provided in Section 33-1-39, every licensee shall, in accordance with the laws and rules and regulations of the board, together with appropriate required information and renewal fee, apply for renewal for such period as set by the board, and the board shall issue the registration certificate to any licensee in good standing with the board. The board shall have the specific authority to adopt such rules and regulations setting the dates and deadlines for license/permit renewal and establishing the penalty for failure to renew same.

Any licensee performing acts within the scope of this chapter without legally having in his or her custody a valid active registration certificate or duly issued duplicate therefor in accordance with provisions elsewhere set out may be found guilty and punished or prosecuted therefor in accordance with law; however, the filing of the application, the payment of the fee, and the issuance of the certificate therefor, shall not entitle the holder thereof to lawfully practice within the State of Mississippi unless he or she has in fact been previously licensed by the State Board of Dental Examiners as provided by this chapter, and unless the license/permit is in full force and effect; in addition, in any prosecution for the unlicensed practice, the receipt showing payment of the renewal fee required by this chapter shall not be treated as evidence that the holder thereof is lawfully entitled to practice according to his or her license/permit.

Any licensee who is registered but not actively practicing in the State of Mississippi at the time of making application for renewal, shall be registered on the inactive list and shall not be authorized to practice his or her profession in this state. The inactive list shall be maintained by the board and shall set out the names and post office addresses of all licensees registered but not actively practicing in this state, arranged alphabetically by name and also by the municipalities and states of their last known professional or residential address. However, licensed dentists or dental hygienists actively practicing at a veterans hospital, federal government facility or residency graduate school program at the time of renewal shall not be registered on the inactive list.

Only the licensees registered on the appropriate list as actively practicing in the State of Mississippi shall be authorized to practice their profession. For the purpose of this section, any licensed dentist or dental hygienist who has actively practiced his or her profession for at least three (3) months of the immediately preceding license renewal period shall be considered in active practice.

No licensee shall be registered on the inactive list until the licensee has been furnished a statement of intent to take that action by the board. The board shall notify the licensee by mail that on the day fixed for hearing he or she may appear and show cause, if any, why his or her license/permit to practice dentistry or dental hygiene should remain active. The licensee may be present at the hearing in person, by counsel, or both. For the purpose of the hearing the board may require the attendance of witnesses, administer oaths and hear testimony, either oral or documentary, for and against the licensee, and if after the hearing, the board is satisfied that the licensee should be registered on the inactive list, it shall thereupon without further notice take that action.

Any licensed dentist or dental hygienist registered on the inactive list shall not be eligible for registration on the active list until either of the following conditions have been satisfied:

(a) Written application shall be submitted to the State Board of Dental Examiners stating the reasons for the inactivity and setting forth such other information as the board may require on an individual basis; or

(b) Evidence to the satisfaction of the board shall be submitted that they have actively practiced their profession in good standing in another state and have not been guilty of conduct that would warrant suspension or revocation as provided by applicable law.

SOURCES: Codes, 1930, § 4301; 1942, § 8753; Laws, 1928, ch. 131; Laws, 1966, ch. 467, § 1; Laws, 1977, ch. 366; reenacted, Laws, 1983, ch. 488, § 10; Laws, 1991, ch. 483, § 10; Laws, 1992, ch. 580, § 1; reenacted without change, Laws, 1997, ch. 541, § 10; reenacted and amended, Laws, 2002, ch. 524, § 10; Laws, 2007, ch. 309, § 9, eff from and after passage (approved Mar. 8, 2007.)

Cross References — Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Unauthorized practice of dentistry or dental hygiene by unlicensed person, see § 73-9-41.

Restriction, suspension or revocation of license in case of inability to practice due to disability, see § 73-9-103.

Criminal offense of practicing as a dentist without license, see § 97-23-43.

§ 73-9-21. Supplies.

Such stationery, blank books and forms as may be needed by the board in the discharge of its duties shall be furnished to it in the manner as like supplies are furnished other state departments.

SOURCES: Codes, 1930, § 4302; 1942, § 8754; Laws, 1928, ch. 131; reenacted without change, Laws, 1983, ch. 488, § 11; reenacted, Laws, 1991, ch. 483, § 11; reenacted without change, Laws, 1997, ch. 541, § 11; reenacted without change, Laws, 2002, ch. 524, § 11, eff from and after June 30, 2002.

Cross References — Duties of capitol commission generally, see § 29-5-3.

§ 73-9-23. Examinations for license.

(1) No person who desires to practice dentistry or dental hygiene in the State of Mississippi shall be licensed until that person has passed an examination by the board. Applicants for examination shall apply in writing to the board for an examination at least thirty (30) days before the examination and shall upon application pay a nonrefundable fee as elsewhere provided in this chapter.

(2) An applicant for licensure by examination as a dentist who is a graduate of a dental school accredited by the Commission on Dental Accreditation of the American Dental Association (ADA), or its successor commission, shall:

(a) Be of good moral character, be possessed of a high school education, and have attained the age of twenty-one (21) years;

(b) Exhibit with the application a diploma or certificate of graduation from the ADA accredited dental school; and

(c) Have successfully completed Parts I and II of the National Board Examinations of the Joint Commission on National Dental Examinations, or its successor commission, unless the applicant graduated from an accredited dental school before 1960.

(3) An applicant for licensure by examination as a dentist who is a graduate of a non-ADA accredited foreign country dental school shall:

(a) Be of good moral character and have attained the age of twenty-one (21) years;

(b) Be proficient in oral and written communications in the English language;

(c) Have completed not less than six (6) academic years of postsecondary study and graduated from a foreign dental school that is recognized by the licensure authorities in that country;

(d) Have been licensed as a dentist or admitted to the practice of dentistry in the foreign country in which the applicant received foreign dental school training;

(e) Present documentation of having completed at least two (2) or more years of full-time postdoctoral dental education in a dental school accredited by the Commission on Dental Accreditation of the American Dental Association, or its successor commission, and has been certified by the dean of the accredited dental school as having achieved the same level of didactic and clinical competence as expected of a graduate of the school; and

(f) Have successfully completed Parts I and II of the National Board Examinations of the Joint Commission on National Dental Examinations, or its successor commission, unless the applicant graduated from an approved dental school before 1960.

(4) An applicant for licensure by examination as a dental hygienist who is a graduate of a dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association (ADA), or its successor commission, shall:

(a) Be of good moral character, be possessed of a high school education and have attained the age of eighteen (18) years;

(b) Exhibit with the application a diploma or certificate of graduation from the ADA accredited dental hygiene school; and

(c) Have successfully completed the National Board Dental Hygiene Examinations of the Joint Commission on National Dental Examinations, or its successor commission.

(5) An applicant for licensure by examination as a dental hygienist who is a graduate of a non-ADA accredited foreign country dental hygiene school shall:

(a) Be of good moral character and have attained the age of eighteen (18) years;

(b) Be proficient in oral and written communications in the English language;

(c) Have completed not less than two (2) academic years of postsecondary study and graduated from a foreign dental hygiene school that is recognized by the licensure authorities in that country;

(d) Have been licensed as a dental hygienist or admitted to the practice of dental hygiene in the foreign country in which the applicant received foreign dental hygiene school training;

(e) Present documentation of having completed at least one or more years of full-time postgraduate clinical education in a dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association, or its successor commission, and has been certified by the dean of the accredited dental hygiene school as having achieved the same level of didactic and clinical competence as expected of a graduate of the school; and

(f) Have successfully completed the National Board Dental Hygiene Examinations of the Joint Commission on National Dental Examinations, or its successor commission.

(6) Applications shall be made in the form and content as required in this section and as shall be prescribed by the board, and each applicant shall submit upon request such proof as the board may require as to age, character and qualifications. Applications must be signed by two (2) citizens of the state of which the applicant is a resident, attesting under oath that the applicant is of good moral character. All applicants for licensure shall submit an endorsement from all states in which he or she is currently licensed or has ever been licensed to practice dentistry or dental hygiene. The board may disallow the licensure examination to any applicant who has been found guilty of any of the grounds for disciplinary action as enumerated in Section 73-9-61.

(7) Examination shall be as elsewhere provided in this chapter and the board may by its rules and regulations prescribe reasonable professional standards for oral, written, clinical and other examinations given to applicants, and, if deemed necessary by the board, include a requirement that licensure examinations of applicants be conducted utilizing live human subjects. Each applicant shall appear before the board and be examined to

determine his or her learning and skill in dentistry or dental hygiene. If found by the members of the board conducting the examination to possess sufficient learning and skill therein and to be of good moral character, the board shall, as early as practicable, grant to the person a license to practice dentistry or dental hygiene, as the case may be, which shall be signed by each member of the board who attended the examination and approved the issuance of a license.

(8) The Board of Dental Examiners may, at its own discretion, accept certification of a licensure applicant, either dentist or dental hygienist, by the National Board Examinations of the Joint Commission on National Dental Examinations, or its successor commission, in lieu of the written examination. However, in all such instances the board shall retain the right to administer such further written and practical examinations and demonstrations as it deems necessary.

(9) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Codes, 1930, § 4303; 1942, § 8755; Laws, 1928, ch. 131; Laws, 1944, ch. 276, § 2; Laws, 1952, ch. 323, § 1; Laws, 1956, ch. 303; Laws, 1966, ch. 468, § 1; Laws, 1981, ch. 307, § 1; reenacted, Laws, 1983, ch. 488, § 12; Laws, 1988, ch. 394; Laws, 1991, ch. 483, § 12; Laws, 1992, ch. 580, § 2; reenacted without change, Laws, 1997, ch. 541, § 12; Laws, 1997, ch. 588, § 37; Laws, 2000, ch. 560, § 4; reenacted and amended, Laws, 2002, ch. 524, § 12; Laws, 2003, ch. 387, § 1, eff from and after July 1, 2003.

Editor's Note — Section 12 of ch. 541, Laws of 1997, reenacted this section without change, effective June 30, 1997. Section 37 of ch. 588, Laws of 1997, effective July 1, 1997, amended this section. As set out above, this section reflects the language of Section 37 of ch. 588, Laws of 1997.

Cross References — Qualifying for license based on credentials, see § 73-9-24.

Examination subjects, time and place, and fees, see § 73-9-25.

Examination for certification as dental specialist, see § 73-9-29.

Schedule of license fees, see § 73-9-43.

Grounds for denial of license, see § 73-9-61.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 55 et seq.

CJS. 70 C.J.S., Physicians, Surgeons and Other Health-Care Providers §§ 24-29.

§ 73-9-24. Alternative procedure for qualifying for license based on credentials.

(1) In addition to the method for obtaining a license to practice dentistry or dental hygiene by way of examination as provided by Section 73-9-23, the board, in its sole discretion, may grant a license to a candidate who meets the following criteria:

(a) Submit proof of graduation from a dental school or school of dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association (ADA), or its successor commission;

(b) Be engaged in the active practice of dentistry or dental hygiene or in full-time dental education or dental hygiene education for the past five (5) years;

(c) Currently hold a valid, unrestricted and unexpired license in a state whose standards for licensure are determined by the board as equivalent to Mississippi's standards, and which state grants reciprocity or licensure by credentials to licensees of the State of Mississippi;

(d) Provides an endorsement from all states in which he or she is currently licensed or has ever been licensed to practice dentistry or dental hygiene;

(e) Has not been the subject of pending or final disciplinary action in any state in which the applicant has been licensed;

(f) Is not the subject of a pending investigation in any other state or jurisdiction;

(g) Has passed a state or regional clinical licensure examination and, within the past five (5) years, has not failed a clinical licensure examination administered by another state, jurisdiction, or regional licensing board;

(h) Has not failed at any time, a licensure examination administered by the Mississippi State Board of Dental Examiners;

(i) Provides a written statement agreeing to appear for interviews at the request of the board;

(j) Has successfully completed all parts of the National Board Examinations of the Joint Commission on National Dental Examinations, or its successor commission, unless the applicant graduated from an accredited dental or dental hygiene school before 1960;

(k) Successfully passes a written jurisprudence examination;

(*l*) Provides payment of a nonrefundable application fee as provided in Section 73-9-43; and

(m) In addition, the State Board of Dental Examiners may consider the following in accepting, rejecting or denying an application for licensure by credentialing:

(i) Information from the National Practitioner Data Bank, the Healthcare Integrity and Protection Data Bank and/or the American Association of Dental Examiners Clearinghouse for Disciplinary Information.

(ii) Questioning under oath.

(iii) Results of peer review reports from constituent societies and/or federal dental services.

(iv) Substance abuse testing or treatment.

(v) Background checks for criminal or fraudulent activities.

(vi) Participation in continuing education.

(vii) A current certificate in cardiopulmonary resuscitation.

(viii) Recent patient case reports and/or oral defense of diagnosis and treatment plans.

(ix) No physical or psychological impairment that would adversely affect the ability to deliver quality dental care.

(x) Agreement to initiate practice in the credentialing jurisdiction within a reasonable period of time.

(xi) Proof of professional liability coverage and that the coverage has not been refused, declined, canceled, nonrenewed or modified.

(xii) Any additional information or documentation that the board may stipulate by rule or regulation as necessary to qualify for a license by credentialing.

(2) The board shall be granted sufficient time to conduct a complete inquiry into the applicant's qualifications for licensure by credentials, and the board may adopt such rules and regulations pertaining to the time needed to conduct investigations and the responsibility of applicants to produce verifiable documentation.

(3) Any applicant failing to meet the criteria in subsection (1) of this section shall not be eligible for a license based on credentials. Upon meeting the criteria in subsection (1) of this section, the Mississippi State Board of Dental Examiners may, in its discretion, issue to the applicant a license to practice dentistry, or dental hygiene, unless grounds for denial of licensure exist as enumerated in Section 73-9-61. Evidence of falsification in the application for licensure through credentialing will result in revocation of the license.

(4) Any applicant applying for a specialty license by credentials must stay within his or her board recognized specialty and must practice only that specialty within the State of Mississippi. A specialty license holder must hold a general dentistry license before obtaining a specialty license.

(5) The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 1993, ch. 465, § 3; reenacted without change, Laws, 1997, ch. 541, § 13; Laws, 2000, ch. 560, § 5; reenacted and amended, Laws, 2002, ch. 524, § 13; Laws, 2003, ch. 387, § 2; Laws, 2013, ch. 350, § 11, eff from and after July 1, 2013.

Cross References — Unauthorized practice of dentistry or dental hygiene by unlicensed person, see § 73-9-41.

Criminal offense of practicing as a dentist without license, see § 97-23-43.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 63-68.

CJS. 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24-28.

§ 73-9-25. Examinations; subjects; time and place for holding.

The regular meeting of the State Board of Dental Examiners shall be held at least annually at such place, date and time as the board may determine in its discretion, for the purpose of examining applicants for a license to practice dentistry and dental hygiene, and continue in session until all applicants have been examined and their examinations have been approved or disapproved. The board may meet more often if necessary, in the discretion of the board, at such times and places as it may deem proper for the examination of applicants who may wish to practice dentistry or dental hygiene in this state, to administer makeup examinations, or for the purpose of enforcing the dental laws of the state.

Examinations for a license to practice dentistry or dental hygiene shall cover the subjects taught in the recognized schools of dentistry or dental hygiene together with such other subjects and practical demonstrations as the board may require.

The state shall furnish the necessary equipment for the required practical examinations for dentists and dental hygienists, and properly house and care for same.

SOURCES: Codes, 1930, § 4304; 1942, § 8756; Laws, 1928, ch. 131; Laws, 1966, ch. 469, § 1; reenacted without change, Laws, 1983, ch. 488, § 13; reenacted, Laws, 1991, ch. 483, § 13; reenacted without change, Laws, 1997, ch. 541, § 14; Laws, 2000, ch. 560, § 6; reenacted and amended, Laws, 2002, ch. 524, § 14, eff from and after June 30, 2002.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 59, 60.

6 Am. Jur. Proof of Facts 3d, Anesthesia Malpractice, §§ 1 et seq.

CJS. 70 C.J.S., Physicians, Surgeons and Other Health-Care Providers §§ 24-29.

§ 73-9-27. Licenses; how issued and fees.

Each license issued by the board shall bear a serial number, the full name and residence of licensee, the date of issuance, the seal of the board, and shall be attested by the signatures of all the board members. Certified copies of the license may be issued by the president, secretary or executive director under their signature and seal, for which the secretary or executive director shall collect a fee as elsewhere provided in this chapter.

SOURCES: Codes, 1930, § 4304; 1942, § 8757; Laws, 1928, ch. 131; Laws, 1966, ch. 468, § 2; reenacted without change, Laws, 1983, ch. 488, § 14; reenacted, Laws, 1991, ch. 483, § 14; reenacted without change, Laws, 1997, ch. 541, § 15; reenacted and amended, Laws, 2002, ch. 524, § 15, eff from and after June 30, 2002.

RESEARCH REFERENCES

ALR. Valuation of goodwill in medical or dental practice for purposes of divorce court's property distribution. 78 A.L.R.4th 853.

§ 73-9-28. Issuance of special license, certificate or permit for teaching or dental practice in limited categories.

The Mississippi State Board of Dental Examiners is vested with the authority to promulgate rules and regulations allowing special categories of licenses, certificates, specialty certificates and permits under which institutional, teaching and provisional privileges may be granted on an individual basis, pursuant to such rules and regulations prescribing the qualifications, conditions and limitations of such privileges as may be established by the board. Those qualifications, conditions and limitations shall pertain to applicants who require but are eligible for less than complete resident licensure as provided for in the dental practice act.

Application for a special category of license, certificate, specialty certificate or permit, and the renewal thereof, shall be made to the board in writing in accordance with such rules and regulations as the board may adopt. The secretary or executive director shall collect a fee therefor as provided in Section 73-9-43.

SOURCES: Laws, 1974, ch. 412; Laws, 1983, ch. 488, § 15; reenacted, Laws, 1991, ch. 483, § 15; reenacted without change, Laws, 1997, ch. 541, § 16; reenacted and amended, Laws, 2002, ch. 524, § 16, eff from and after June 30, 2002.

Cross References — Schedule of fees, see § 73-9-43.

§ 73-9-29. Certification of dental specialists.

Any dentist of this state licensed by the Mississippi State Board of Dental Examiners, who has complied with the requirements specified by the Council on Dental Education of the American Dental Association, or its successor council or commission, in a specialty branch of dentistry or who has otherwise met the requirements of the rules and regulations promulgated by the board may apply for a certificate as a specialist. The application shall be accompanied by the payment of a fee not to exceed the fee provided for in Section 73-9-43 and the application must be on file for at least sixty (60) days before the regular meeting of the board, and if the application is accepted the applicant may be notified to appear for examination before the board and a committee of that particular specialty, if available, appointed by the board. Examinations may be oral, written, or both, and the applicant may be required to demonstrate his or her knowledge and proficiency in the specialty in which he or she desires to be certified. The board is authorized to certify specialists in all specialty areas approved by the American Dental Association.

Any dentist not licensed by the Mississippi State Board of Dental Examiners but who is eligible to take the Mississippi State Board examination, and is further eligible for specialty examination, may take both examinations at the discretion of the board.

No licensed dentist shall hold himself or herself out to the public as a specialist, or publicly announce as being specially qualified in any particular branch of dentistry, or publicly announce as giving special attention to any branch of dentistry, until he or she has been issued a certificate by the board authorizing him or her to do so. Failure to comply shall be cause for his or her dental license to be revoked or suspended.

Only the following shall be eligible to announce as specialists:

(a) A diplomate of a specialty board approved by the American Dental Association;

(b) A dentist who has complied with requirements as specified by the Council on Dental Education of the American Dental Association, or its successor council or commission, for graduate training in the specialty sought to be announced, the training to meet the educational or training requirement for diplomate status;

(c) A dentist who has announced a specialized practice in one (1) of the special areas of dental practice within the State of Mississippi for at least five (5) years before January 1, 1970, and who meets the requirements elsewhere in this section may be granted a specialist certificate upon application and payment only of an initial specialty registration fee.

A dentist specialist's certificate shall be revoked or voided upon the revocation or voiding of the holder's license to practice dentistry in Mississippi.

SOURCES: Codes, 1942, § 8757.5; Laws, 1970, ch. 419, § 2; reenacted without change, Laws, 1983, ch. 488, § 16; Laws, 1987, ch. 385; reenacted, Laws, 1991, ch. 483, § 16; Laws, 1993, ch. 465, § 4; reenacted without change, Laws, 1997, ch. 541, § 17; reenacted and amended, Laws, 2002, ch. 524, § 17, eff from and after June 30, 2002.

Cross References — Schedule of fees, see § 73-9-43.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 58 et seq.

CJS. 70 C.J.S., Physicians, Surgeons and Other Health-Care Providers §§ 24-29.

§ 73-9-31. Repealed.

Repealed by Laws of 1983, ch. 488, § 39, eff from and after July 1, 1983.

[Codes, 1930, § 4306; 1942, § 8758; Laws, 1928, ch. 131; Laws, 1966, ch. 468, § 3; Laws, 1974, ch. 411]

Editor's Note — Former § 73-9-31 related to reciprocity.

§ 73-9-33. Repealed.

Repealed by Laws of 2002, ch. 524, § 18, eff from and after June 30, 2002.

[Codes, 1930, § 4307; Laws, 1942, § 8759; Laws, 1928, ch. 131; reenacted without substantive change, Laws, 1983, ch. 488, § 17; reenacted, Laws, 1991, ch. 483, § 17; reenacted without change, Laws, 1997, ch. 541, § 18, eff from and after June 30, 1997.]

Editor's Note — Former § 73-9-33 required the resignation of licenses in the office of the circuit clerk of the residence of the licensee.

§ 73-9-35. Licenses to be exhibited.

The holder of either of the licenses provided for, shall at all times, upon request, exhibit same to any member of the Board of Dental Examiners, or his authorized agent or to any officer of the law.

SOURCES: Codes, 1930, § 4308; 1942, § 8760; Laws, 1928, ch. 131; reenacted without change, Laws, 1983, ch. 488, § 18; reenacted, Laws, 1991, ch. 483, § 18; reenacted without change, Laws, 1997, ch. 541, § 19; reenacted and amended, Laws, 2002, ch. 524, § 19, eff from and after June 30, 2002.

§ 73-9-37. Duplicate licenses: when issued.

If a license to practice dentistry or dental hygiene be issued and be lost or destroyed, the board may issue another in lieu thereof, upon satisfactory proof of such loss or destruction.

SOURCES: Codes, 1930, § 4309; 1942, § 8761; Laws, 1928, ch. 131; reenacted without change, Laws, 1983, ch. 488, § 19; reenacted, Laws, 1991, ch. 483, § 19; reenacted without change, Laws, 1997, ch. 541, § 20; reenacted without change, Laws, 2002, ch. 524, § 20, eff from and after June 30, 2002.

§ 73-9-39. Practice under corporation or business name prohibited.

It shall be unlawful for any person or persons to practice or offer to practice dentistry under, or use the name of any company, association or corporation or business name or any name except his or their own in a manner which is in violation of Section 73-9-61, or to operate, manage or be employed in any room, rooms or office where dental work is done or contracted for, and that is operated under the name of any company, association, trade name or corporation in a manner which is in violation of Section 73-9-61.

SOURCES: Codes, 1930, § 4311; 1942, § 8763; Laws, 1928, ch. 131; Laws, 1970, ch. 418, § 3; Laws, 1983, ch. 488, § 20; reenacted, Laws, 1991, ch. 483, § 20; reenacted without change, Laws, 1997, ch. 541, § 21; reenacted without change, Laws, 2002, ch. 524, § 21, eff from and after June 30, 2002.

RESEARCH REFERENCES

ALR. Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts without license as a separate or continuing offense. 99 A.L.R.2d 654.

CJS. 70 C.J.S., Physicians, Surgeons and Other Health-Care Providers § 73.

§ 73-9-41. Unauthorized practice of dentistry or dental hygiene by unlicensed person; board may summon suspected violators; civil penalties for violations; costs of investigation and hearing; violators must return any fees collected.

(1) No person shall practice, attempt to practice or offer to practice dentistry or dental hygiene within the state without first having been authorized and issued a license by the board; nor shall any person practice, attempt to practice, or offer to practice dentistry or dental hygiene within the state during any period of suspension of his or her license by the board or after revocation or being voided for failure to reregister by the board of any license previously issued to the offending person.

(2) A person who has never been issued a license to practice dentistry or dental hygiene or whose license has been suspended, voided or revoked by action of the board, shall not perform any act that would constitute the practice of dentistry or dental hygiene as defined in Sections 73-9-3 and 73-9-5, including, but not limited to, the following:

(a) Making impressions or casts of the human mouth or teeth;

(b) Constructing or supplying dentures without the work authorization or prescription of a person licensed under the laws of this state to practice dentistry; and

(c) Constructing or supplying dentures from impressions or casts without the work authorization or prescription of a person licensed under the laws of this state to practice dentistry.

(3) The fact that any person engages in or performs or offers to engage in or performs any of the practices, acts or operations set forth in Section 73-9-3 or Section 73-9-5 is prima facie evidence that the person is engaged in the practice of dentistry or dental hygiene.

(4) In addition to any other civil remedy or criminal penalty provided for by law, the executive director or the secretary of the board may issue a summons to appear before the board to any person or persons who the executive director or any member of the board has probable cause to believe has violated this section by practicing, attempting to practice, or offering to practice dentistry or dental hygiene without a current, valid license or permit and any necessary witnesses. The summons issued by the board shall command each person to whom it is directed to attend and give testimony at a time and place specified in the summons. The summons shall be served upon the individual personally or by any type of mailing requiring a return receipt and shall include a statement of the charges and an explanation of the manner in which the unlicensed person shall be required to respond to the board.

(5) In proceedings conducted pursuant to subsection (4) of this section, the board may levy for each and every violation a civil penalty upon any unlicensed person who after a hearing is found to have practiced dentistry or dental hygiene without the benefit of a current, valid license having been issued by the board under the provisions of this chapter, as follows:

(a) For the first violation, a monetary penalty of not more than Five Hundred Dollars ($500.00).

(b) For the second violation, a monetary penalty of not more than One Thousand Dollars ($1,000.00).

(c) For the third and any subsequent violations, a monetary penalty of not more than Five Thousand Dollars ($5,000.00).

(d) For any violation, the board may assess those reasonable costs that are expended by the board in the investigation and conduct of the hearing as provided in subsection (4) of this section, including, but not limited to, the cost of process service, court reporters, expert witnesses and other witness expenses paid by the board, and investigators. Appeals from the board's decision may be taken as provided in Section 73-9-65. Any monetary penalty or assessment levied under this section shall be paid to the board by the illegal practitioner upon the expiration of the period allowed for appealing those penalties or may be paid sooner if the illegal practitioner elects. Monetary penalties collected by the board under this section shall be deposited to the credit of the General Fund of the State Treasury. Any monies collected for assessment of costs by the board shall be deposited into the special fund of the board.

(6) No person practicing dentistry or dental hygiene without a current valid license shall have the right to receive any compensation for services so rendered. In addition to any other penalties imposed under this section, any person who practices dentistry or dental hygiene without a license shall return any fees collected for practicing dentistry or dental hygiene and shall be liable for any damages resulting from negligent conduct. The board or any patient shall have the right to enforce the obligation provided in this section.

SOURCES: Codes, 1930, § 4312; 1942, § 8764; Laws, 1928, ch. 131; Laws, 1944, ch. 276, § 3; reenacted without change, Laws, 1983, ch. 488, § 21; reenacted, Laws, 1991, ch. 483, § 21; reenacted without change, Laws, 1997, ch. 541, § 22; Laws, 2000, ch. 560, § 7; reenacted and amended, Laws, 2002, ch. 524, § 22, eff from and after June 30, 2002.

Cross References — Penalties for practicing illegally, see § 73-9-57.

Denial of issuance or renewal, revocation or suspension of license for cause, see § 73-9-61.

Criminal offense of practicing as a dentist without license, see § 97-23-43.

JUDICIAL DECISIONS

1. In general.

Mere assertion, without statement of facts establishing claim, that prohibition against denturism contained within Mississippi Mental Practices Act is not rationally related to state's legitimate goal of protecting, safety and welfare of public, is insufficient to support finding that action of legislature in enacting act was irrational. Rayborn v. Mississippi State Bd. of Dental Exmrs., 776 F.2d 530 (5th Cir. 1985).

§ 73-9-43. Schedule of license fees; delinquency penalties; disposition and distribution of fees.

(1) The secretary or executive director shall collect in advance all fees provided for in this chapter as established by the board, not to exceed:

Application for dental license	$ 600.00
Application for dental license through credentials	2,500.00
Application for dental specialty license	400.00
Application for dental institutional, teaching or provisional license	600.00
Application for dental hygiene license	400.00
Application for dental hygiene license through credentials	750.00
Application for dental hygiene institutional, teaching, or provisional license	400.00
Application for general anesthesia permit	400.00
Application for I.V. sedation permit	400.00
Application for radiology permit	100.00
Dental license renewal	300.00
Dental specialty license renewal	200.00
Dental institutional, teaching or provisional license renewal	300.00
Dental hygiene license renewal	150.00
Dental hygiene institutional, teaching, or provisional license renewal	150.00
General anesthesia permit renewal	200.00
I.V. sedation permit renewal	200.00
Radiology permit renewal	75.00
Penalty for delinquent renewal of dental licenses; dental specialty licenses; and dental institutional, teaching, and provisional licenses:	
First month (plus renewal fee)	100.00
Second month (plus renewal fee)	150.00
Penalty for delinquent renewal of dental hygiene licenses and dental hygiene institutional, teaching, and provisional licenses:	
First month (plus renewal fee)	50.00
Second month (plus renewal fee)	75.00
Penalty for delinquent renewal of radiology permits:	
First month (plus renewal fee)	45.00
Second month (plus renewal fee)	65.00
Penalty for nonnotification of change of address	50.00

Penalty for duplicate renewal forms and certification cards	50.00
Duplicate or replacement license or permit	40.00
Certification of licensure status	40.00
Certified copy of license or permit	40.00
Handling fee for nonsufficient funds check	50.00
Requests for database information	300.00
Radiology examinations administered in board's office	100.00
Dental and dental hygiene licensure examination manuals	50.00
Dental and dental hygiene licensure by credentials packets	50.00
Laws and/or regulations	50.00
Disciplinary action orders	25.00
Newsletters	20.00

(2) The board may enact and enforce for delinquency in payment for any fees set out in this section a penalty in addition to the fee of an amount up to but not in excess of the fee. An additional fee of an amount equal to the first penalty may be assessed for each thirty (30) days, or part thereof, of delinquency. If any license or permit holder is delinquent in payment of renewal fees exceeding sixty (60) days from the initial renewal deadline as set by the board, the person shall be presumed to be no longer practicing, shall be stricken from the rolls and shall be deemed an illegal practitioner, subject to the penalties as enumerated in Section 73-9-41. In order to practice his or her profession in this state thereafter, the person may, at the discretion of the board, be considered as a new applicant and subject to examination and other licensing requirements as an original applicant.

(3) The secretary or executive director shall faithfully account for all monies received by the board. All fees and any other monies received by the board, except monetary penalties collected under Section 73-9-61, shall be deposited in a special fund that is created in the State Treasury and shall be used for the implementation and administration of this chapter when appropriated by the Legislature for that purpose. Any interest earned on this special fund shall be credited by the State Treasurer to the fund and shall not be paid into the State General Fund. Any unexpended monies remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund.

(4) For conducting the initial and retake examinations of applicants for licensure the secretary shall receive no more than Nine Hundred Dollars ($900.00) per day for each examination, and no other member shall receive more than Seven Hundred Dollars ($700.00) per day for each examination. The receipt of that compensation shall not entitle members of the board to receive or be eligible for any state employee group insurance, retirement or other fringe benefits. Any fees or income other than the maximum allowable for examining applicants for licensure as set out above shall be accounted for and may be used as needed in carrying out the provisions of this chapter.

(5) A portion of the fee charged for license renewal of dentists and dental hygienists may be used to support a program to aid impaired dentists and/or dental hygienists. The payment of per diem and expense for attending board meetings shall be in addition to the compensation permitted above for

examining applicants for licensure, and the per diem shall not exceed the amount provided in Section 25-3-69.

SOURCES: Codes, 1930, § 4313; 1942, § 8765; Laws, 1928, ch. 131; Laws, 1952, ch. 323, § 2; Laws, 1966, ch. 468, § 4; Laws, 1970, ch. 404, § 1; Laws, 1978, ch. 449, § 1; Laws, 1982, ch. 332, § 2; Laws, 1983, ch. 488, § 22; Laws, 1985, ch. 348; Laws, 1988, ch. 539; reenacted, Laws, 1991, ch. 483, § 22; Laws, 1992, ch. 502, § 3; Laws, 1992, ch. 580, § 3; Laws, 1993, ch. 465, § 5; reenacted without change, Laws, 1997, ch. 541, § 23; Laws, 2000, ch. 560, § 8; reenacted and amended, Laws, 2002, ch. 524, § 23, eff from and after June 30, 2002.

Cross References — Per diem paid legislators attending extraordinary or called session, see § 5-1-41.

Authority of secretary to collect fee on application for special license granting institutional, teaching and provisional privileges on individual basis, see § 73-9-28.

ATTORNEY GENERAL OPINIONS

The Board of Dental Examiners could only release funds in its possession, which consisted of the portion of the annual licensure fee collected to support a program to aid impaired dentists and/or dental hygienists, in accordance with the specific instruction and directives of the Department of Finance and Administration. Howell, Oct. 13, 2000, A.G. Op. #2000-0601.

§ 73-9-45. Board members to investigate complaints.

Each member of the board and each licensed and practicing dentist and dental hygienist is constituted an agent who may investigate all complaints and all alleged cases of noncompliance with, or violation of the provisions of this chapter and may bring all those matters to the notice of the proper prosecuting officers, where it appears probable that an offense has been committed.

SOURCES: Codes, 1930, § 4314; 1942, § 8766; Laws, 1928, ch. 131; reenacted without change, Laws, 1983, ch. 488, § 23; reenacted, Laws, 1991, ch. 483, § 23; reenacted without change, Laws, 1997, ch. 541, § 24; reenacted and amended, Laws, 2002, ch. 524, § 24, eff from and after June 30, 2002.

§ 73-9-47. Voting by mail.

The board shall, as far as practicable, provide by rule for the conduct of its business by mail, but all examinations shall be conducted in person by the board, or by a quorum thereof as provided herein.

Any official action or vote taken by mail shall be preserved by the secretary or executive director in the same manner as the minutes of regular meetings.

SOURCES: Codes, 1930, § 4315; 1942, § 8767; Laws, 1928, ch. 131; reenacted without change, Laws, 1983, ch. 488, § 24; reenacted, Laws, 1991, ch. 483, § 24; reenacted without change, Laws, 1997, ch. 541, § 25; reenacted and amended, Laws, 2002, ch. 524, § 25, eff from and after June 30, 2002.

§ 73-9-49. Secretary's report.

The secretary or executive director of the board shall, at its regular annual meeting, submit a report of its receipts and disbursements for the preceding year, and a report of its actions in general during the preceding year.

SOURCES: Codes, 1930, § 4316; 1942, § 8768; Laws, 1928, ch. 131; reenacted without change, Laws, 1983, ch. 488, § 25; reenacted, Laws, 1991, ch. 483, § 25; reenacted without change, Laws, 1997, ch. 541, § 26; reenacted and amended, Laws, 2002, ch. 524, § 26, eff from and after June 30, 2002.

§ 73-9-51. Board members not liable to suit for official acts.

No member of the board shall during the term of his office or thereafter, be required to defend any action for damages in any of the courts of this state where it is shown that said damage followed or resulted from any of the official acts of said board in the performance of its powers, duties or authority as set forth in this chapter. Any such action filed shall upon motion be dismissed, at the cost of the plaintiff, with prejudice.

SOURCES: Codes, 1930, § 4317; 1942, § 8769; Laws, 1928, ch. 131; reenacted without change, Laws, 1983, ch. 488, § 26; reenacted, Laws, 1991, ch. 483, § 26; reenacted without change, Laws, 1997, ch. 541, § 27; reenacted without change, Laws, 2002, ch. 524, § 27, eff from and after June 30, 2002.

§ 73-9-53. Licensed pharmacists may fill dentists' prescriptions.

Legally licensed pharmacists of this state are hereby authorized to fill prescriptions of legally licensed and registered dentists of this state for any drugs to be used in the practice of dentistry.

SOURCES: Codes, 1930, § 4318; 1942, § 8770; Laws, 1928, ch. 131; Laws, 1966, ch. 470, § 1; reenacted without change, Laws, 1983, ch. 488, § 27; reenacted, Laws, 1991, ch. 483, § 27; reenacted without change, Laws, 1997, ch. 541, § 28; reenacted without change, Laws, 2002, ch. 524, § 28, eff from and after June 30, 2002.

§ 73-9-55. Authorization for dental laboratory work.

A written work authorization shall accompany all dental laboratory work sent by a licensed dentist to a commercial dental laboratory or private dental laboratory technician.

The original of said written authorization shall be kept on file by a commercial dental laboratory or a private dental laboratory technician for a period of time required by the State Board of Dental Examiners, not to exceed two (2) years from the date it was received, and one (1) carbon copy of this written work authorization shall be kept on file by the licensed dentist executing this written work authorization for a like period not to exceed two (2) years from the date it was issued.

This said written work authorization shall include the following information:

(1) Date signed.

(2) The name and address of the commercial dental laboratory or private dental laboratory technician.

(3) The name or identification number of the patient for whom the act or service is ordered.

(4) The licensed dentist's name, address, and license number.

(5) The signature of the licensed dentist.

(6) The description of the kind and type of appliance, process, fabrication, service, or material ordered.

Any dental laboratory having received a work authorization from a licensed dentist for any appliance, process, fabrication, service, or material, who shall thereafter secure the services of another dental laboratory for the performance of any said work or services, shall furnish to such laboratory a written work order therefor, and both laboratories shall keep on file a record thereof for a like period not to exceed two (2) years from the date received.

In the enforcement of this section and the foregoing rules and regulations promulgated pursuant thereto, the members of the Board of Dental Examiners, their agents, investigators, and employees shall have the right to inspect the records of any dental office or any dental laboratory during regular office hours.

SOURCES: Codes, 1942, § 8770.5; Laws, 1970, ch. 404, § 2; reenacted without change, Laws, 1983, ch. 488, § 28; reenacted, Laws, 1991, ch. 483, § 28; reenacted without change, Laws, 1997, ch. 541, § 29; reenacted without change, Laws, 2002, ch. 524, § 29, eff from and after June 30, 2002.

§ 73-9-57. Penalties for practicing illegally.

If any person for any reason whatsoever, shall practice, attempt, or offer to practice dentistry or dental hygiene illegally within the meaning of this chapter, he or she shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than Two Thousand Dollars ($2.000.00) nor more than Five Thousand Dollars ($5,000.00) or be imprisoned in the county jail not less than two (2) months nor more than six (6) months.

SOURCES: Codes, 1930, § 4319; 1942, § 8771; Laws, 1928, ch. 131; Laws, 1952, ch. 323, § 3; reenacted without substantive change, Laws, 1983, ch. 488, § 29; reenacted, Laws, 1991, ch. 483, § 29; reenacted without change, Laws, 1997, ch. 541, § 30; reenacted and amended, Laws, 2002, ch. 524, § 30, eff from and after June 30, 2002.

Cross References — Injunctions to restrain unlawful practice of profession, see § 73-51-1.

Criminal offense of practicing as a dentist without license, see § 97-23-43.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 121 et seq.

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Form 35.

CJS. 70 C.J.S., Physicians, Surgeons and Other Health-Care Providers §§ 43 et seq.

§ 73-9-59. Prosecuting officers under duty to act.

It shall be the duty of the several prosecuting officers of this state on notice from a member of the board or other persons having knowledge of violations of this chapter to institute prosecutions in the same manner as for other misdemeanors.

SOURCES: Codes, 1930, § 4320; 1942, § 8772; Laws, 1928, ch. 131; reenacted without change, Laws, 1983, ch. 488, § 30; reenacted, Laws, 1991, ch. 483, § 30; reenacted without change, Laws, 1997, ch. 541, § 31; reenacted without change, Laws, 2002, ch. 524, § 31, eff from and after June 30, 2002.

§ 73-9-61. Denial of issuance or renewal, revocation, or suspension of license for cause; monetary penalty in lieu of denial, revocation, or suspension; other disciplinary measures [Paragraph (1)(r) repealed effective July 1, 2020].

(1) Upon satisfactory proof, and in accordance with statutory provisions elsewhere set out for such hearings and protecting the rights of the accused as well as the public, the State Board of Dental Examiners may deny the issuance or renewal of a license or may revoke or suspend the license of any licensed dentist or dental hygienist practicing in the State of Mississippi, or take any other action in relation to the license as the board may deem proper under the circumstances, for any of the following reasons:

(a) Misrepresentation in obtaining a license, or attempting to obtain, obtaining, attempting to renew or renewing a license or professional credential by making any material misrepresentation, including the signing in his or her professional capacity any certificate that is known to be false at the time he or she makes or signs the certificate.

(b) Willful violation of any of the rules or regulations duly promulgated by the board, or of any of the rules or regulations duly promulgated by the appropriate dental licensure agency of another state or jurisdiction.

(c) Being impaired in the ability to practice dentistry or dental hygiene with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

(d) Administering, dispensing or prescribing any prescriptive medication or drug outside the course of legitimate professional dental practice.

(e) Being convicted or found guilty of or entering a plea of nolo contendere to, regardless of adjudication, a violation of any federal or state law regulating the possession, distribution or use of any narcotic drug or any drug considered a controlled substance under state or federal law, a certified copy of the conviction order or judgment rendered by the trial court being prima facie evidence thereof, notwithstanding the pendency of any appeal.

(f) Practicing incompetently or negligently, regardless of whether there is actual harm to the patient.

(g) Being convicted or found guilty of or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction that relates to the practice of dentistry or dental hygiene, a certified copy of the conviction order or judgment rendered by the trial court being prima facie evidence thereof, notwithstanding the pendency of any appeal.

(h) Being convicted or found guilty of or entering a plea of nolo contendere to, regardless of adjudication, a felony in any jurisdiction, a certified copy of the conviction order or judgment rendered by the trial court being prima facie evidence thereof, notwithstanding the pendency of any appeal.

(i) Delegating professional responsibilities to a person who is not qualified by training, experience or licensure to perform them.

(j) The refusal of a licensing authority of another state or jurisdiction to issue or renew a license, permit or certificate to practice dentistry or dental hygiene in that jurisdiction or the revocation, suspension or other restriction imposed on a license, permit or certificate issued by the licensing authority that prevents or restricts practice in that jurisdiction, a certified copy of the disciplinary order or action taken by the other state or jurisdiction being prima facie evidence thereof, notwithstanding the pendency of any appeal.

(k) Surrender of a license or authorization to practice dentistry or dental hygiene in another state or jurisdiction when the board has reasonable cause to believe that the surrender is made to avoid or in anticipation of a disciplinary action.

(*l*) Any unprofessional conduct to be determined by the board on a case-by-case basis, which shall include, but not be restricted to, the following:

(i) Committing any crime involving moral turpitude.

(ii) Practicing deceit or other fraud upon the public.

(iii) Practicing dentistry or dental hygiene under a false or assumed name.

(iv) Advertising that is false, deceptive or misleading.

(v) Announcing a specialized practice shall be considered advertising that tends to deceive or mislead the public unless the dentist announcing as a specialist conforms to other statutory provisions and the duly promulgated rules or regulations of the board pertaining to practice of dentistry in the State of Mississippi.

(m) Failure to provide and maintain reasonable sanitary facilities and conditions or failure to follow board rules regarding infection control.

(n) Committing any act which would constitute sexual misconduct upon a patient or upon ancillary staff. For purposes of this subsection, the term sexual misconduct means:

(i) Use of the licensee-patient relationship to engage or attempt to engage the patient in sexual activity; or

(ii) Conduct of a licensee that is intended to intimidate, coerce, influence or trick any person employed by or for the licensee in a dental practice or educational setting for the purpose of engaging in sexual activity or activity intended for the sexual gratification of the licensee.

(o) Violation of a lawful order of the board previously entered in a disciplinary or licensure hearing; failure to cooperate with any lawful request or investigation by the board; or failure to comply with a lawfully issued subpoena of the board.

(p) Willful, obstinate and continuing refusal to cooperate with the board in observing its rules and regulations in promptly paying all legal license or other fees required by law.

(q) Practicing dentistry or dental hygiene while the person's license is suspended.

(r) Violation(s) of the provisions of Sections 41-121-1 through 41-121-9 relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2020.

(2) In lieu of revocation of a license as provided for above, the board may suspend the license of the offending dentist or dental hygienist, suspend the sedation permit of the offending dentist, or take any other action in relation to his or her license as the board may deem proper under the circumstances.

(3) When a license to practice dentistry or dental hygiene is revoked or suspended by the board, the board may, in its discretion, stay the revocation or suspension and simultaneously place the licensee on probation upon the condition that the licensee shall not violate the laws of the State of Mississippi pertaining to the practice of dentistry or dental hygiene and shall not violate the rules and regulations of the board and shall not violate any terms in relation to his or her license as may be set by the board.

(4) In a proceeding conducted under this section by the board for the denial, revocation or suspension of a license to practice dentistry or dental hygiene, the board shall have the power and authority for the grounds stated for that denial, revocation or suspension, and in addition thereto or in lieu of that denial, revocation or suspension may assess and levy upon any person licensed to practice dentistry or dental hygiene in the State of Mississippi, a monetary penalty, as follows:

(a) For the first violation of any of subparagraph (a), (b), (c), (d), (f), (i), (*l*), (m), (n), (o) or (q) of subsection (1) of this section, a monetary penalty of not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00).

(b) For the second violation of any of subparagraph (a), (b), (c), (d), (f), (i), (*l*), (m), (n), (o) or (q) of subsection (1) of this section, a monetary penalty of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00).

(c) For the third and any subsequent violation of any of subparagraph (a), (b), (c), (d), (f), (i), (*l*), (m), (n), (o) or (q) of subsection (1) of this section, a monetary penalty of not less than Five Hundred Dollars ($500.00) and not more than Five Thousand Dollars ($5,000.00).

(d) For any violation of any of subparagraphs (a) through (q) of subsection (1) of this section, those reasonable costs that are expended by the board in the investigation and conduct of a proceeding for licensure revocation or suspension, including, but not limited to, the cost of process service, court reporters, expert witnesses and investigators.

(5) The power and authority of the board to assess and levy monetary penalties under this section shall not be affected or diminished by any other proceeding, civil or criminal, concerning the same violation or violations except as provided in this section.

(6) A licensee shall have the right of appeal from the assessment and levy of a monetary penalty as provided in this section under the same conditions as a right of appeal is provided elsewhere for appeals from an adverse ruling, order or decision of the board.

(7) Any monetary penalty assessed and levied under this section shall not take effect until after the time for appeal has expired. In the event of an appeal, the appeal shall act as a supersedeas.

(8) A monetary penalty assessed and levied under this section shall be paid to the board by the licensee upon the expiration of the period allowed for appeal of those penalties under this section or may be paid sooner if the licensee elects. With the exception of subsection (4)(d) of this section, monetary penalties collected by the board under this section shall be deposited to the credit of the General Fund of the State Treasury. Any monies collected by the board under subsection (4)(d) of this section shall be deposited into the special fund operating account of the board.

(9) When payment of a monetary penalty assessed and levied by the board against a licensee in accordance with this section is not paid by the licensee when due under this section, the board shall have power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county and judicial district of residence of the licensee, and if the licensee is a nonresident of the State of Mississippi, the proceedings shall be in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(10) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

(11) All grounds for disciplinary action, including imposition of fines and assessment of costs as enumerated above, shall also apply to any other license

or permit issued by the board under this chapter or regulations duly adopted by the board.

SOURCES: Codes, 1930, § 4321; 1942, § 8773; Laws, 1928, ch. 131; Laws, 1936, ch. 299; Laws, 1966, ch. 471, § 1; Laws, 1970, ch. 404, § 3; Laws, 1979, ch. 336; Laws, 1983, ch. 488, § 31; Laws, 1991, ch. 483, § 31; Laws, 1992, ch. 580, § 4; Laws, 1996, ch. 507, § 34; reenacted without change, Laws, 1997, ch. 541, § 32; Laws, 2000, ch. 560, § 9; reenacted and amended, Laws, 2002, ch. 524, § 32; Laws, 2012, ch. 409, § 7; Laws, 2016, ch. 419, § 8, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment extended the repealer for paragraph (1)(r) by substituting "July 1, 2020" for "July 1, 2016" at the end of (1)(r).

Cross References — Board to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health care providers, see § 41-34-3.

Requirement that Board establish procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Prohibition of practice under corporation or business name, see § 73-9-39.

Disposition of fees and other money received by the board, and exemption of monetary penalties collected under this section from requirement that fees and monies received by State Board of Dental Examiners be deposited in special fund for implementation and administration of this chapter, see § 73-9-43.

Accusation filed against dentist or dental hygienist charging commission of offenses enumerated in this section, see § 73-9-63.

Accused being entitled to hearing, notice and appeal, see § 73-9-65.

Restriction, suspension or revocation of license in case of inability to practice due to disability, see § 73-9-103.

Suspension of State-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

JUDICIAL DECISIONS

1. Construction and application.
2. Grounds for revocation or suspension.
3. —Misrepresentations.
4. —Practice under false or assumed name.

1. Construction and application.

Decision by the Mississippi State Board of Dental Examiners to suspend the license of a dentist to practice dentistry for five years was not the equivalent of an excessive fine. Holt v. Miss. State Bd. of Dental Exam'rs, 131 So. 3d 1271 (Miss. Ct. App. 2014).

Statutes such as this are penal in nature and must be strictly construed. Mississippi State Bd. of Dental Exmrs. v. Mandell, 198 Miss. 49, 21 So. 2d 405 (1945).

The word "wilful," as used in penal statutes generally means with a bad purpose, an evil purpose, without ground for believing the act to be lawful, and indicates a bad or corrupt purpose, but an act which merely reflects thoughtlessness and exhibits only an error of judgment, with no bad or evil purpose, is not wilful. Mississippi State Bd. of Dental Exmrs. v. Mandell, 198 Miss. 49, 21 So. 2d 405 (1945).

"Misrepresentation" to board of dental examiners within the meaning of this section [Code 1942, § 8773] necessarily involves moral delinquency, guilty knowledge and intent to deceive. Mississippi State Bd. of Dental Exmrs. v. Mandell, 198 Miss. 49, 21 So. 2d 405 (1945).

2. Grounds for revocation or suspension.

The fact that the legislature changed the penalty in May, 1972, so as to again make it a felony for one to have in his possession more than one ounce of marijuana, did not take effect until after its enactment and did not result in making the crime, for which the defendant was previously tried, a felony, and, therefore, the chancellor should have ordered the Mississippi Board of Dental Examiners to reinstate the license of the defendant to practice dentistry. Boring v. Mississippi State Bd. of Dental Exmrs., 300 So. 2d 135 (Miss. 1974).

3. —Misrepresentations.

Mere fact that applicant for dentistry license typed the names of two Mississippi residents for character references although they did not know the applicant and did not authorize the signature of their names, did not constitute a wilful or fraudulent misrepresentation so as to warrant revocation of dentistry license, where the applicant knew no one in the state and a reputable dentist in another state informed the applicant that these two Mississippi residents were his friends and, on his recommendation and request, would sign the character certificates. Mississippi State Bd. of Dental Exmrs. v. Mandell, 198 Miss. 49, 21 So. 2d 405 (1945).

Answer to question in application for dentistry license that applicant was reared in the United States, when as a matter of fact he did not reach this country from abroad until approximately his 20th or 21st year, did not constitute a wilful misrepresentation so as to justify revocation of his license, where applicant stated that by "reared in the United States" he had in mind that he was informing the board that he was educated in the United States. Mississippi State Bd. of Dental Exmrs. v. Mandell, 198 Miss. 49, 21 So. 2d 405 (1945).

Where Roumanian immigrant whose original name was "Ianko Moishe Mendell" enrolled at university as "James Mendell" and subsequently adopted the English or American counterpart of his original name, "James Maurice Mandell," and signed his application for dentistry license as such, the fact that he stated in the application that he had attended the university for two years before entering upon the study of dentistry and had taken a certain number of courses thereat did not constitute a wilful and fraudulent misrepresentation so as to warrant revocation of his license on the ground that he never attended the university and did not take the courses under the name of "James Maurice Mandell," even though no formal legal proceedings were invoked in changing his name. Mississippi State Bd. of Dental Exmrs. v. Mandell, 198 Miss. 49, 21 So. 2d 405 (1945).

4. —Practice under false or assumed name.

The fact that Roumanian immigrant whose original name was "Ianko Moishe Mendell" signed the application for and was practicing dentistry under the name of "James Maurice Mandell," which was the English or American counterpart of his original name, did not constitute practicing dentistry under a false or assumed name so as to warrant revocation of his dentistry license, even though in changing his name the licensee did not invoke any legal proceedings. Mississippi State Bd. of Dental Exmrs. v. Mandell, 198 Miss. 49, 21 So. 2d 405 (1945).

RESEARCH REFERENCES

ALR. Proximate cause in malpractice cases. 13 A.L.R.2d 11.

Conclusiveness of statement or decision of accountant or similar third person under contract between others requiring property to be valued by him. 50 A.L.R.2d 1268.

Liability of dentist to patient. 83 A.L.R.2d 7.

Alcoholism, narcotics addiction, or misconduct with respect to alcoholic beverages or narcotics, as ground for revocation or suspension of license to practice medicine or dentistry. 93 A.L.R.2d 1398.

Revocation or suspension of physician's or surgeon's license for false claims, medical reports, or bills for medical services in personal injury litigation. 95 A.L.R.2d 873.

Professional incompetency as ground for disciplinary measure against physician or dentist. 28 A.L.R.3d 487.

Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare or similar welfare program for providing medical services. 50 A.L.R.3d 549.

Recovery, and measure and element of damages, in action against dentist for breach of contract to achieve particular result or cure. 11 A.L.R.4th 748.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer. 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Liability for dental malpractice in provision or fitting of dentures. 77 A.L.R.4th 222.

Liability of orthodontist for malpractice. 81 A.L.R.4th 632.

Wrongful or Excessive Prescription of Drugs as Ground for Revocation or Suspension of Physician's or Dentist's License to Practice. 19 A.L.R.6th 577.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 74 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Form 19.

25 Am. Jur. Trials 495 Dental Malpractice Litigation.

36 Am. Jur. Proof of Facts 2d 1, Dental Malpractice.

CJS. 70 C.J.S., Physicians, Surgeons and Other Health-Care Providers §§ 52-59, 63.

§ 73-9-63. Complaint filed against dentist or dental hygienist; hearing.

A complaint may be filed with the secretary or executive director of the board, by any person charging a licensed dentist or dental hygienist with the commission of any of the offenses enumerated in Section 73-9-61. The complaint shall be in writing and signed by the accuser, or accusers. If upon review of the complaint, the board determines that there is not substantial justification to believe that the accused dentist or dental hygienist has committed any of the offenses enumerated in the preceding section, it may dismiss the complaint. In the event of a dismissal, the person filing the complaint and the accused dentist or dental hygienist shall be given written notice of the board's determination. If the board determines there is reasonable cause to believe the accused has committed the offenses, and a hearing should be held to determine the validity of the complaint, the executive director of the board shall set a day for a hearing, and shall notify the accused that on the day fixed for hearing he or she may appear and show cause, if any, why his or her license to practice dentistry or dental hygiene in the state should not be revoked or have other disciplinary action taken against it. The notice shall be served upon the dentist or dental hygienist either personally or by registered or certified mail with return receipt requested. The board may, by regulation, establish an investigative panel consisting of at least two (2) people, one (1) of whom shall be a board member, to review complaints to determine the existence of probable cause and whether the complaints should proceed to formal hearing.

Nothing in this section shall prevent the board from determining that it should investigate a licensee without a signed complaint provided that a prior determination is made that probable cause exists that a violation of this chapter may have occurred.

For the purpose of the hearings or investigation of complaints, the board is empowered to require the attendance of witnesses, reimburse witnesses for necessary expenses and mileage incurred, subpoena documents and records, employ and compensate expert witnesses, administer oaths, and hear testimony, either oral or documentary, for and against the accused. Hearings shall be conducted by a majority of the members of the board. A record of the hearing shall be made, which shall consist of all testimony received and all documents and other material introduced. If after the hearing the board is satisfied that the accused has been guilty of the offense charged in the accusation, it shall thereupon, without further notice, order such disciplinary action as it deems proper. All procedural due process requirements as enumerated above also shall apply to any other license or permit issued by the board under this chapter or regulations duly adopted by the board.

SOURCES: Codes, 1930, § 4322; 1942, § 8774; Laws, 1928, ch. 131; Laws, 1983, ch. 488, § 32; Laws, 1991, ch. 483, § 32; Laws, 1993, ch. 465, § 6; reenacted without change, Laws, 1997, ch. 541, § 33; Laws, 2000, ch. 560, § 10; reenacted and amended, Laws, 2002, ch. 524, § 33, eff from and after June 30, 2002.

Cross References — Accused entitled to hearing, notice and appeal, see § 73-9-65.

JUDICIAL DECISIONS

1. In general.

Where there was no formal charge filed against appellant dentist with the Mississippi Board of Dental Examiners as required by this section [Code 1972, § 73-9-63], the board had no authority to give notice, hold a hearing, and revoke the license of the dentist, and the order of the board was void. Boring v. Mississippi State Bd. of Dental Exmrs., 300 So. 2d 135 (Miss. 1974).

Statutes such as this are penal in nature and must be strictly construed. Mississippi State Bd. of Dental Exmrs. v. Mandell, 198 Miss. 49, 21 So. 2d 405 (1945).

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 74 et seq.

CJS. 70 C.J.S., Physicians, Surgeons and Other Health-Care Providers §§ 52-59, 63.

§ 73-9-65. Accused entitled to notice, hearing and appeal; practice of dentistry or dental hygiene pending appeal.

No disciplinary action against a licensee shall be taken until the accused has been furnished a statement of the charges against him or her and a notice of the time and place of hearing thereof. The accused may be present at the hearing in person, by counsel, or both. The board may, for good cause shown, reinstate any license revoked or suspended. The procedure for the reinstatement of a license that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. The right to appeal any disciplinary actions of the board regarding the license of any dentist or dental hygienist is granted. The appeal shall be to the chancery court of the county in which the dentist or dental hygienist resides, except where the dentist or dental hygienist does not reside in the State of Mississippi, in which case the appeal shall be to the Chancery Court of the First Judicial District of Hinds County, Mississippi. The appeal must be taken within thirty (30) days after notice of the action of the board. The appeal is perfected upon filing a notice of appeal, together with a bond in the sum of One Hundred Dollars ($100.00), with two (2) sureties, conditioned that if the action of the board regarding the license is affirmed by the chancery court the dentist or dental hygienist will pay the costs of the appeal and the action in the chancery court. Those bonds shall be approved by the president of the board. In lieu of the bond, the dentist or dental hygienist may deposit One Hundred Dollars ($100.00) with the clerk of the chancery court. If there is an appeal, the appeal may, in the discretion of and on motion to the chancery court, act as a supersedeas. The chancery court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may, in the discretion of the chancellor, be tried in vacation. Appeals may be had to the Supreme Court of the State of Mississippi as provided by law from any final action of the chancery court. No such person shall be allowed to practice dentistry or dental hygiene or deliver health care services in violation of any action of the chancery court while any such appeal to the Supreme Court is pending. All procedural appeal requirements as enumerated above also shall apply to any other license or permit issued by the board under this chapter or regulations duly adopted by the board.

Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SOURCES: Codes, 1930, § 4323; 1942, § 8775; Laws, 1928, ch. 131; Laws, 1979, ch. 334; Laws, 1983, ch. 488, § 33; Laws, 1991, ch. 483, § 33; Laws, 1996, ch. 507, § 35; reenacted without change, Laws, 1997, ch. 541, § 34; reenacted and amended, Laws, 2002, ch. 524, § 34, eff from and after June 30, 2002.

Cross References — Suspension or revocation of license for cause, see § 73-9-61.

Petition for reinstatement and judicial review of board order where licensure has been restricted, suspended, or revoked under the Mississippi Disabled Dentist Law, see § 73-9-115.

Suspension of State-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

JUDICIAL DECISIONS

1. Right to an attorney.

Mississippi State Board of Dental Examiners was not obligated to ensure that a dentist had an attorney during an informal, non-adjudicatory hearing. Furthermore, the Board postponed the original date of the informal hearing to accommodate the dentist's attorney, but, even so, the dentist appeared at the informal hearing without an attorney. Holt v. Miss. State Bd. of Dental Exam'rs, 131 So. 3d 1271 (Miss. Ct. App. 2014).

RESEARCH REFERENCES

ALR. Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist. 74 A.L.R.4th 969.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 102 et seq.

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Form 19.

CJS. 70 C.J.S., Physicians, Surgeons and Other Health-Care Providers §§ 60, 61 et seq.

§ 73-9-67. Repealed.

Repealed by Laws of 2002, ch. 524, § 35, eff from and after June 30, 2002.

[Laws, 1979, ch. 301, § 24; Laws, 1979, ch. 357, § 10; Laws, 1983, ch. 488, § 34; Laws, 1991, ch. 483, § 35; Laws, 1997, ch. 541, § 35, eff from and after June 30, 1997.]

Editor's Note — Former § 73-9-67 provided for the repeal of §§ 73-9-1 through 73-9-117.

MISSISSIPPI DISABLED DENTIST LAW

Sec.	
73-9-101.	Short title.
73-9-103.	Restriction, suspension, or revocation of license in case of inability to practice due to disability.
73-9-105.	Examination to determine existence of disability.
73-9-107.	Conduct of examination; report of findings and recommendations; notice to licensee; independent examination; failure to comply with examination grounds for suspension; inspection of patient records.
73-9-109.	Voluntary restriction on license; removal of restriction.
73-9-111.	Examining committee to report findings to board; board may accept or reject findings; hearing before board.
73-9-113.	Board proceedings against licensee; notice to licensee; hearing; determination of fitness to practice; remedies; temporary suspension of license without hearing.
73-9-115.	Petition for reinstatement; judicial review of board's orders.

73-9-117. Immunity of board and persons providing information in good faith from liability.

§ 73-9-101. Short title.

Sections 73-9-101 through 73-9-117 shall be known as the "Mississippi Disabled Dentist Law."

SOURCES: Laws, 2000, ch. 560, § 11, eff from and after July 1, 2000.

§ 73-9-103. Restriction, suspension, or revocation of license in case of inability to practice due to disability.

The license of any dentist or dental hygienist in this state shall be subject to restriction, suspension or revocation, as hereinafter provided, in case of inability of the licensee to practice dentistry or dental hygiene with reasonable skill or safety to patients by reason of one or more of the following:

(a) Mental illness;

(b) Physical illness, including, but not limited to, deterioration through the aging process, or loss of motor skill;

(c) Excessive use or abuse of drugs, including alcohol.

SOURCES: Laws, 2000, ch. 560, § 12, eff from and after July 1, 2000.

Cross References — Examination to determine existence of disability, see § 73-9-105.

Conduct of examination, report of findings, recommendations, notice to licensee, see § 73-9-107.

Hearings, see § 73-9-113.

Petition for reinstatement, see § 73-9-115.

§ 73-9-105. Examination to determine existence of disability.

(1) If the State Board of Dental Examiners has reasonable cause to believe that a dentist or dental hygienist licensed to practice dentistry or dental hygiene in this state is unable to practice with reasonable skill and safety to patients because of a condition described in Section 73-9-103, such board of dental examiners shall cause an examination of such dentist or dental hygienist to be made as described in subsection (2) of this section and shall, following such examination, take appropriate action within the provisions of Sections 73-9-101 through 73-9-117.

(2) Examination of a dentist or dental hygienist under this section shall be conducted by an examining committee designated by the board. Such examining committee shall be composed of at least two (2) practicing dentists, three (3) practicing physicians, and shall include at least one (1) psychiatrist if a question of mental illness is involved.

SOURCES: Laws, 2000, ch. 560, § 13, eff from and after July 1, 2000.

§ 73-9-107. Conduct of examination; report of findings and recommendations; notice to licensee; independent examination; failure to comply with examination grounds for suspension; inspection of patient records.

(1) The examining committee assigned to examine a dentist or dental hygienist pursuant to referral by the board under Section 73-9-105 shall conduct an examination of the dentist or dental hygienist for the purpose of determining his or her fitness to practice dentistry or dental hygiene with reasonable skill and safety to patients, either on a restricted or unrestricted basis, and shall report its findings and recommendations to the board. The committee shall order the dentist or dental hygienist to appear before the committee for examination and give him or her ten (10) days' notice of the time and place of the examination, together with a statement of the cause for the examination. The notice shall be served upon the dentist or dental hygienist either personally or by registered or certified mail with return receipt requested.

(2) If the examining committee, in its discretion, deems an independent mental or physical examination of the dentist or dental hygienist necessary to its determination of the fitness of the dentist or dental hygienist to practice, the committee shall order the dentist or dental hygienist to submit to the examination. Any person licensed to practice dentistry or dental hygiene in this state shall be deemed to have waived all objections to the admissibility of the examining committee's report in any proceedings before the board under Sections 73-9-101 through 73-9-117 on the grounds of privileged communication. Any dentist or dental hygienist ordered to an examination before the committee under this subsection shall be entitled to an independent mental or physical examination if he or she makes a request therefor.

(3) Any dentist or dental hygienist who submits to a diagnostic mental or physical examination as ordered by the examining committee shall have a right to designate another physician to be present at the examination and make an independent report to the board.

(4) Failure of a dentist or dental hygienist to comply with a committee order under subsection (1) of this section to appear before it for examination or to submit to mental or physical examination under subsection (2) of this section shall be reported by the committee to the board, and unless due to circumstances beyond the control of the dentist or dental hygienist, shall be grounds for suspension by the board of his or her license to practice dentistry or dental hygiene in this state until such time as the dentist or dental hygienist has complied with the order of the committee.

(5) The examining committee may inspect patient records in accordance with the rules and regulations duly promulgated by the Board of Dental Examiners.

(6) All patient records, investigative reports, and other documents in possession of the board and examining committee shall be deemed confidential and not subject to subpoena or disclosure unless so ordered by the court from

which the subpoena issued, but the court, in its discretion, may limit use or disclosure of the records. Notwithstanding, and to encourage the prompt reporting of disabled practitioners, neither the board nor examining committee shall reveal the identity of any source of information where the source has requested anonymity.

SOURCES: Laws, 2000, ch. 560, § 14; Laws, 2002, ch. 524, § 36, eff from and after June 30, 2002.

§ 73-9-109. Voluntary restriction on license; removal of restriction.

A dentist or dental hygienist may request in writing to the board a restriction of his license to practice dentistry or dental hygiene. The board may grant such request for restriction and shall have authority, if it deems appropriate, to attach conditions to the licensure of the dentist or dental hygienist to practice dentistry or dental hygiene within specified limitations, and waive the commencement of any proceeding under Section 73-9-113. Removal of a voluntary restriction on licensure to practice dentistry or dental hygiene shall be subject to the procedure for reinstatement of license in Section 73-9-115.

SOURCES: Laws, 2000, ch. 560, § 15, eff from and after July 1, 2000.

§ 73-9-111. Examining committee to report findings to board; board may accept or reject findings; hearing before board.

(1) The examining committee shall report to the board its findings on the examination of the dentist or dental hygienist under Section 73-9-107, the determination of the committee as to the fitness of the dentist or dental hygienist to engage in the practice of dentistry or dental hygiene with reasonable skill and safety to patients, either on a restricted or unrestricted basis, and any management that the committee may recommend. Such recommendation by the committee shall be advisory only and shall not be binding on the board.

(2) The board may accept or reject the recommendation of the examining committee to permit a dentist or dental hygienist to continue to practice with or without any restriction on his license to practice dentistry or dental hygiene, or may refer the matter back to the examining committee for further examination and report thereon.

(3) In the absence of a voluntary agreement by a dentist or dental hygienist under Section 73-9-109 for restriction of the licensure of such dentist or dental hygienist to practice dentistry or dental hygiene, any dentist or dental hygienist shall be entitled to a hearing in formal proceedings before the board and a determination on the evidence as to whether or not restriction, suspension or revocation of licensure shall be imposed.

SOURCES: Laws, 2000, ch. 560, § 16, eff from and after July 1, 2000.

§ 73-9-113. Board proceedings against licensee; notice to licensee; hearing; determination of fitness to practice; remedies; temporary suspension of license without hearing.

(1) The board may proceed against a dentist or dental hygienist under Sections 73-9-101 through 73-9-117 by serving upon the dentist or dental hygienist at least fifteen (15) days' notice of a time and place fixed for a hearing, together with copies of the examining committee's report and diagnosis. The notice and reports shall be served upon the dentist or dental hygienist either personally or by registered or certified mail with return receipt requested.

(2) At the hearing the dentist or dental hygienist shall have the right to be present, to be represented by counsel, to produce witnesses or evidence in his or her behalf, to cross-examine witnesses, and to have subpoenas issued by the board.

(3) At the conclusion of the hearing, the board shall make a determination of the merits and may issue an order imposing one or more of the following:

(a) Make a recommendation that the dentist or dental hygienist submit to the care, counseling or treatment by physicians acceptable to the board.

(b) Suspend or restrict the license to practice dentistry or dental hygiene for the duration of his or her impairment.

(c) Revoke the license of the dentist or dental hygienist.

(d) Impose an assessment of costs or monetary penalty as provided for in Section 73-9-61.

(4) The board may temporarily suspend the license of any dentist or dental hygienist without a hearing, simultaneously with the institution of proceedings for a hearing under this section, if it finds that the evidence in support of the examining committee's determination is clear, competent and unequivocal and that his or her continuation in practice would constitute an imminent danger to public health and safety.

(5) Neither the record of the proceedings nor any order entered against a dentist or dental hygienist may be used against him or her in any other legal proceedings except upon judicial review as provided herein.

SOURCES: Laws, 2000, ch. 560, § 17; Laws, 2002, ch. 524, § 37, eff from and after June 30, 2002.

§ 73-9-115. Petition for reinstatement; judicial review of board's orders.

(1) A dentist or dental hygienist whose licensure has been restricted, suspended or revoked under Sections 73-9-101 through 73-9-113, voluntarily or by action of the board, shall have a right, at reasonable intervals, to petition for reinstatement of his license and to demonstrate that he can resume the competent practice of dentistry or dental hygiene with reasonable skill and safety to patients. Such petition shall be made in writing and on a form prescribed by the board. Action of the board on such petition shall be initiated

by referral to and examination by the examining committee pursuant to the provisions of Sections 73-9-105 and 73-9-107. The board may, upon written recommendation of the examining committee, restore the licensure of the dentist or dental hygienist on a general or limited basis or institute a proceeding pursuant to Section 73-9-113 for the determination of the fitness of the dentist or dental hygienist to resume his practice.

(2) All orders of the board entered under Sections 73-9-113(3) and (4) shall be subject to judicial review by appeal to the chancery court of the county of the residence of the dentist or dental hygienist involved against whom the order is rendered, within thirty (30) days following the date of entry of the order, the appeal to be taken and perfected in the same manner as provided in Section 73-9-65.

SOURCES: Laws, 2000, ch. 560, § 18, eff from and after July 1, 2000.

Cross References — Appeal of revocation or suspension of license of dentist or dental hygienist, see § 73-9-65.

§ 73-9-117. Immunity of board and persons providing information in good faith from liability.

There shall be no liability on the part of and no action for damages against:

(a) Any member of the examining committee or the board for any action undertaken or performed by such member within the scope of the functions of such committee or the board under Sections 73-9-101 through 73-9-115 when acting without malice and in the reasonable belief that the action taken by him is warranted; or

(b) Any person providing information to the committee or to the board without malice in the reasonable belief that such information is accurate.

SOURCES: Laws, 2000, ch. 560, § 19, eff from and after July 1, 2000.

CHAPTER 10

Dietitians

Sec.

73-10-1. Short title.
73-10-3. Definitions.
73-10-5. Definition of practice.
73-10-7. License requirement.
73-10-9. Applicant qualifications; fee [Repealed effective July 1, 2020].
73-10-11. Provisional license; fee [Repealed effective July 1, 2020].
73-10-13. Exemptions.
73-10-15. Practice by nonresident dietitian; reciprocity.
73-10-17. Council of Advisors in Dietetics; membership, appointments, and meetings.
73-10-19. Removal from Advisory Council.
73-10-21. Duties of Board [Repealed effective July 1, 2020].
73-10-23. Penalties for violations.
73-10-25. Repealed.

§ 73-10-1. Short title.

This chapter shall be known and may be cited as the Mississippi Dietetics Practice Act of 1986.

SOURCES: Laws, 1986, ch. 453, § 1; reenacted without change, Laws, 2000, ch. 483, § 1; reenacted without change, Laws, 2002, ch. 620, § 1, eff from and after July 1, 2002.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 1 et seq.

§ 73-10-3. Definitions.

(1) For the purposes of this chapter the following terms shall have the meanings set forth herein:

(a) "Advisory council" means the Mississippi Council of Advisors in Dietetics established in this chapter.

(b) "Board" means the Mississippi State Board of Health.

(c) "Association" means the American Dietetic Association (ADA).

(d) "Mississippi association" means the Mississippi Dietetic Association, an affiliate of the American Dietetic Association.

(e) "Commission on Dietetic Registration" (CDR) means the Commission on Dietetic Registration that is a member of the National Commission for Health Certifying Agencies.

(f) "Degree" means a degree received from a college or university that was accredited through the Council on Postsecondary Accreditation and the United States Department of Education at the time the degree was conferred.

(g) "Registered dietitian" means a person registered by the Commission on Dietetic Registration.

(h) "Licensed dietitian" means a person licensed under this chapter.

(i) "Provisionally licensed dietitian" means a person provisionally licensed under this chapter.

(j) "Dietetics practice" means the integration and application of the principles derived from the sciences of nutrition, biochemistry, food, physiology, management and behavioral and social sciences to achieve and maintain people's health. Dietetics practice includes, but is not limited to:

(i) Providing medical nutrition therapy.

(ii) Development, administration, evaluation and consultation regarding nutritional care standards of quality in food services and medical nutrition therapy.

(iii) Providing case management services.

(k) "Medical nutrition therapy" is a nutritional diagnostic therapy and counseling services for the purpose of disease management. It means the assessment of the nutritional status of patients with a condition, illness or injury that appropriately requires medical nutrition therapy as part of the treatment. The assessment includes review and analysis of medical and diet history, blood chemistry lab values and anthropometric measurements to determine nutritional status and treatment modalities.

Therapy ranges from diet modification and nutrition counseling to administration of specialized nutrition therapies such as intravenous medical nutritional products as determined necessary to manage a condition or treat illness or injury.

(*l*) "Diet modification and nutrition counseling" means intervention and advice in assisting individuals or groups in the development of personal diet plans to achieve appropriate nutritional intake. To develop the diet plan, the dietitian integrates information from the nutritional assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status.

(m) "Specialized nutrition therapies" mean medical foods, enteral nutrition delivered via tube, or parenteral nutrition delivered by intravenous infusion.

(n) "Nutrition educator" shall mean one who communicates scientific nutrition information to individuals and/or groups and who provides information on food sources of nutrients to meet normal nutrition need based on the most current "Recommended Dietary Allowances" of the Food and Nutrition Board, National Academy of Sciences, National Research Council.

(o) "Dietitian" means one engaged in dietetics practice, medical nutrition therapy or nutrition education. The terms dietitian or dietician are used interchangeably in this chapter.

(p) "Direct, technical supervision" means the direct, technical supervision by a licensed dietitian, as prescribed in regulations by the board, of the dietetics practice or medical nutrition therapy provided to an individual and/or group by a provisionally licensed dietitian.

(q) "Department" means the Mississippi State Department of Health.

(2) All other terms shall have their commonly ascribed definitions unless some other meaning is clearly intended from its context.

SOURCES: Laws, 1986, ch. 453, § 2; Laws, 1994, ch. 400, § 1; reenacted and amended, Laws, 2000, ch. 483, § 2; reenacted without change, Laws, 2002, ch. 620, § 2, eff from and after July 1, 2002.

Cross References — State Board of Health generally, see § 41-3-1 et seq.

Authority of the State Board of Health to seek injunctive relief to prohibit unlicensed persons from providing professional dietetic services as defined in this section, see § 73-10-21.

§ 73-10-5. Definition of practice.

Dietetics is the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, food, management and behavioral and social sciences to achieve and maintain peoples' health. Dietetics practice is the provision of services which include, but are not limited to:

(a) Providing medical nutrition therapy.

(b) Development, administration, evaluation and consultation regarding nutritional care standards of quality in food services and medical nutrition therapy.

(c) Providing case management services.

(d) Developing, implementing and managing nutrition care system.

SOURCES: Laws, 1986, ch. 453, § 3; reenacted and amended, Laws, 2000, ch. 483, § 3; reenacted without change, Laws, 2002, ch. 620, § 3, eff from and after July 1, 2002.

§ 73-10-7. License requirement.

It shall be unlawful for any person, corporation or association to, in any manner, represent himself or itself as a dietitian or nutritionist, send out billings as providing services covered in Section 73-10-3(j), or use in connection with his or its name, the titles "dietitian," "dietician" or "nutritionist" or use the letters "LD," "LN" or any other facsimile thereof when he or she is not licensed in accordance with the provisions of this chapter or meets the exemptions in paragraph (c) of Section 73-10-13. Notwithstanding any other provision of this chapter, a dietitian registered by the Commission on Dietetic Registration (CDR) shall have the right to use the title "Registered Dietitian" and the designation "R.D." Registered dietitians shall be licensed according to the provisions of this chapter to practice dietetics or provide medical nutrition therapy.

SOURCES: Laws, 1986, ch. 453, § 4; Laws, 1994, ch. 400, § 2; reenacted and amended, Laws, 2000, ch. 483, § 4; reenacted without change, Laws, 2002, ch. 620, § 4, eff from and after July 1, 2002.

Cross References — Fees for issuance of a license, see § 73-10-21.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 3 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 21 et seq.

CJS. 53 C.J.S., Licenses §§ 6 et seq.

§ 73-10-9. Applicant qualifications; fee [Repealed effective July 1, 2020].

(1) An applicant for a license as a dietitian shall file a written application on forms provided by the board, showing to the satisfaction of the board that he or she meets the following requirement.

(2) Applicants shall provide evidence of current registration as a registered dietitian by the Commission on Dietetic Registration.

(3) Applicants shall pay a fee as established by the board. Any increase in the fee charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65.

(4) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Laws, 1986, ch. 453, § 5; Laws, 1994, ch. 400, § 3; Laws, 1997, ch. 588, § 38; reenacted and amended, Laws, 2000, ch. 483, § 5; reenacted without change, Laws, 2002, ch. 620, § 5; Laws, 2016, ch. 510, § 43, eff from and after July 1, 2016.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added the last sentence of (3); and deleted "Mississippi Code of 1972" from the end of (4).

Cross References — Provision that the State Board of Health may issue a provisional license to a resident dietitian who has successfully completed three years of accredited undergraduate studies with education requirements of subsection (2) of this section for licensure, see § 73-10-11.

Provision that this chapter does not prevent any person fulfilling the experience requirements of subsection (3) of this section from engaging in the practice of dietetics under the supervision of a dietitian, see § 73-10-13.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 21 et seq.

CJS. 53 C.J.S., Licenses §§ 53-89.

§ 73-10-11. Provisional license; fee [Repealed effective July 1, 2020].

(1) The board may issue a provisional license to any resident dietitian who presents evidence to the advisory council of the successful completion of the education and experience requirements of subsections (2) and (3) of this section for licensure. Such a provisional license may be issued to such a person before he or she has taken the examination to become a registered dietitian as given by the Commission on Dietetic Registration (CDR). A provisional license may be issued for a period not exceeding one (1) year and may be renewed from year to year not to exceed five (5) years.

(2) An applicant for provisional licensure as a dietitian shall present evidence satisfactory to the board of having received a baccalaureate or post-baccalaureate degree from a college or university accredited through the United States Department of Education, Office of Postsecondary Education, with a major in dietetics or an equivalent major course of study as approved by the board.

(3) An applicant for licensure as a dietitian shall submit to the board evidence of having successfully completed a board approved planned program of dietetics experience under the supervision of a licensed or registered dietician.

(4) A provisional license shall permit the holder to practice only under the direct technical supervision of a dietitian.

(5) A fee for a provisional license and for each renewal shall be established by the board. Any increase in the fee charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65.

SOURCES: Laws, 1986, ch. 453, § 6; Laws, 1994, ch. 400, § 4; reenacted and amended, Laws, 2000, ch. 483, § 6; reenacted without change, Laws, 2002, ch. 620, § 6; Laws, 2016, ch. 510, § 44, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added the last sentence of (5).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 29-31.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 21 et seq.

CJS. 53 C.J.S., Licenses §§ 58, 59 et seq.

§ 73-10-13. Exemptions.

This chapter shall not be construed to affect or prevent:

(a) A student enrolled in an approved academic program in dietetics from engaging in the practice of dietetics, if such practice constitutes a part of a supervised course of study, and if the student is designated by a title which clearly indicates his or her status as a student or trainee.

(b) Any person fulfilling the experience requirements of Section 73-10-11(3) from engaging in the practice of dietetics under the supervision of a licensed or registered dietician.

(c) A registered dietitian who is serving in the Armed Forces or the Public Health Service of the United States or is employed by the Department of Veterans Affairs from engaging in the practice of dietetics provided such practice is restricted to such service or employment.

(d) Any person providing dietetic services, including but not limited to dietetic technicians, dietetic assistants and dietary managers, from practicing dietetics while working under the direct technical supervision of a licensed dietician.

(e) Persons licensed or registered to practice the health professions from engaging in the practice of dietetics when covered under the scope of practice of his or her profession, except that such persons may not use the title "dietitian" or "nutritionist."

(f) Persons who perform the activities and services of a nutrition educator in the employ of a federal, state, county or municipal agency, or another political subdivision, or a chartered elementary or secondary school or accredited degree-granting educational institution insofar as such activities and services are part of a salaried position.

(g) Federal, state, county or local government employees involved with programs providing the services of a nutrition educator that help to prevent disease and maintain good nutritional health, including, but not limited to, the Cooperative Extension Service, the Child Nutrition Program, and Project Head Start.

(h) Individuals who do not hold themselves out to be dietitians from marketing or distributing food products including dietary supplements as defined by the Food and Drug Administration or from engaging in the explanation and education of customers regarding the use of such products.

(i) Any person from furnishing general nutrition information as to the use of food, food materials or dietary supplements, nor prevent in any way the free dissemination of literature; provided, however, no such individual may call themselves a dietitian unless they are licensed under this chapter.

SOURCES: Laws, 1986, ch. 453, § 7; Laws, 1994, ch. 400, § 5; reenacted and amended, Laws, 2000, ch. 483, § 7; reenacted without change, Laws, 2002, ch. 620, § 7, eff from and after July 1, 2002.

Cross References — Provision that no person may use the title "dietitian" or related designations unless licensed in accordance with this chapter or unless within the exemption of paragraph (c) of this section, see § 73-10-7.

Federal Aspects — Cooperative Extension Service, see 7 USCS § 3221.

Child nutrition programs, see 42 USCS §§ 1771 et seq.

Head Start programs, see 42 USCS §§ 9831 et seq.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 24, 25, 26, 28.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 73.

CJS. 53 C.J.S., Licenses §§ 56, 57.

§ 73-10-15. Practice by nonresident dietitian; reciprocity.

(1) A nonresident dietitian may practice dietetics in Mississippi for five (5) days per year with current other state's licensure or with current registration with the Commission on Dietetics Registration.

(2) The board may waive the prescribed examination for licensure and grant a license to any person who shall present proof of current licensure as a dietitian in another state, the District of Columbia, or territory of the United States which requires standards for licensure considered by the advisory council to be greater than or equal to the requirements for licensure of this chapter, if such state or territory extends reciprocity to licensees of the State of Mississippi. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 1986, ch. 453, § 8; Laws, 1994, ch. 400, § 6; reenacted and amended, Laws, 2000, ch. 483, § 8; reenacted without change, Laws, 2002, ch. 620, § 8; Laws, 2013, ch. 350, § 12, eff from and after July 1, 2013.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 29, 30.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 21 et seq.

CJS. 53 C.J.S., Licenses §§ 58, 59 et seq.

§ 73-10-17. Council of Advisors in Dietetics; membership, appointments, and meetings.

(1) There is established the Mississippi Council of Advisors in Dietetics under the jurisdiction of the Mississippi State Board of Health.

(2) The council shall be comprised of seven (7) members of whom five (5) shall be dietitians who have been engaged in the practice of dietetics for at least three (3) years immediately preceding their appointment. Members of the council shall be licensed to practice dietetics. The following areas of practice shall be represented by council members: administrative dietetics, clinical dietetics, dietetic education, community nutrition and consultation and private practice. The remaining two (2) members shall be a licensed member of the health professions and a member of the public with an interest in the rights of the consumers of health services.

(3) A person is eligible for appointment as a public member if the person or the person's spouse:

(a) Is not employed by and does not participate in the management of an agency or business entity that provides health care services or that sells, manufactures or distributes health care supplies or equipment; and

(b) Does not own, control or have a direct or indirect interest in more than ten percent (10%) of a business entity that provides health care services or that sells, manufactures or distributes health care supplies or equipment.

(4) Appointments to the advisory council shall be made without regard to race, creed, sex, religion or national origin of the appointees.

(5) The board shall, within sixty (60) days after passage of this chapter, appoint two (2) advisory council members for a term of one (1) year, two (2) for a term of two (2) years, and three (3) for a term of three (3) years. Appointments made thereafter shall be for three-year terms, but no person shall be appointed to serve more than two (2) consecutive terms.

(6) Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed before commencing the terms prescribed by this section.

(7) Not less than sixty (60) days before the end of each calendar year, the Mississippi Dietetic Association shall submit the names of at least two (2) persons for each dietitian vacancy and each of the health professional and public member appointments.

(8) In the event of a vacancy, the board shall, as soon as possible, appoint a person who shall fill the unexpired term.

(9) The council shall meet during the first month of each calendar year to select a chairman and for other appropriate purposes. At least one (1) additional meeting shall be held before the end of each calendar year. Further meetings may be convened at the call of the chairman or the written request of a majority of the council members, or at the request of the board.

(10) A majority of the members of the council shall constitute a quorum for all purposes.

SOURCES: Laws, 1986, ch. 453, § 9; Laws, 1994, ch. 400, § 7; reenacted without change, Laws, 2000, ch. 483, § 9; reenacted without change, Laws, 2002, ch. 620, § 9, eff from and after July 1, 2002.

Cross References — State Board of Health generally, see § 41-3-1 et seq.

§ 73-10-19. Removal from Advisory Council.

(1) It shall be a ground for removal from the advisory council if a member:

(a) Does not have at the time of appointment the qualifications required for appointment to the advisory council;

(b) Does not maintain during service on the advisory council the qualifications required for appointment to the council;

(c) Violates a prohibition established by this chapter; or

(d) Fails to attend advisory council meetings for the period of one (1) year.

(2) If a ground for removal of a member from the council exists, the advisory council's actions taken during the existence of the ground for removal shall be valid.

SOURCES: Laws, 1986, ch. 453, § 10; reenacted and amended, Laws, 2000, ch. 483, § 10; reenacted without change, Laws, 2002, ch. 620, § 10, eff from and after July 1, 2002.

§ 73-10-21. Duties of Board [Repealed effective July 1, 2020].

(1) Rules, regulations and standards.

(a) The board is empowered, authorized and directed to adopt, amend, promulgate and enforce such rules, regulations and standards governing dietitians as may be necessary to further the accomplishment of the purpose of the governing law, and in so doing shall utilize as the basis thereof the corresponding recommendations of the advisory council. The rules, regulations and minimum standards for licensing of dietitians may be amended by the board as deemed necessary. In so doing, the board shall utilize as the basis thereof the corresponding recommendations of the advisory council.

(b) The board shall publish and disseminate to all licensees, in appropriate manner, the licensure standards prescribed by this chapter, any amendments thereto, and such rules and regulations as the board may adopt under the authority vested by Section 73-38-13, within sixty (60) days of their adoption.

(2) The board shall adopt a code of ethics for dietitians using as the basis thereof the ADA "Code of Ethics for the Profession of Dietetics."

(3) Issuance and renewal of licenses.

(a) The board shall issue a license to any person who meets the requirements of this chapter upon payment of the license fee prescribed.

(b) Except as provided in Section 33-1-39, licenses under this chapter shall be valid for two (2) calendar years and shall be subject to renewal and shall expire unless renewed in the manner prescribed by the rules and regulations of the board, upon the payment of a biennial renewal fee to be set at the discretion of the board, but not to exceed One Hundred Dollars ($100.00), and the presentation of evidence satisfactory to the board that the licensee has met such continuing education requirements as the board may require. Any increase in the fee charged by the board under this paragraph shall be in accordance with the provisions of Section 41-3-65. An applicant for license renewal shall demonstrate to the board evidence of satisfactory completion of the continuing education requirements established by the American Dietetic Association and/or other continuing education requirements as may be required by the board.

(c) The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules and regulations, but no such late renewal of a license may be granted more than one (1) year after its expiration. Any increase in the fee charged by the board under this paragraph shall be in accordance with the provisions of Section 41-3-65.

(d) A suspended license shall be subject to expiration and may be renewed as provided in this section, but such renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other conduct or activity in violation of the order of judgment by which the license was suspended. If a license revoked on disciplinary grounds is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and any late fee that may be applicable.

(4) Denial or revocation of license.

(a) The board may deny or refuse to renew a license, or suspend or revoke a license, or issue orders to cease or desist from certain conduct, or issue warnings or reprimands where the licensee or applicant for license has been convicted of unlawful conduct or has demonstrated unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public. Such conduct includes:

(i) Obtaining a license by means of fraud, misrepresentation or concealment of material facts;

(ii) Being guilty of unprofessional conduct as defined by the rules and established by the board or violating the Code of Ethics of the American Dietetic Association;

(iii) Being convicted of a crime in any court other than a misdemeanor;

(iv) Violating any lawful order, rule or regulation rendered or adopted by the board; or

(v) Violating any provision of this chapter.

(b) Such denial, refusal to renew, suspension, revocation, order to cease and desist from designated conduct, or warning or reprimand may be ordered by the board in a decision made after a hearing in the manner provided by the rules and regulations adopted by the board. One (1) year from the date of the revocation of a license, application may be made to the board for reinstatement. The board shall have discretion to accept or reject an application for reinstatement and may, but shall not be required to, hold a hearing to consider such reinstatement.

(c) In addition to the reasons specified in paragraph (a) of this subsection (4), the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

(5) Establish fees.

(a) A person licensed under this chapter shall pay to the board a fee, not to exceed One Hundred Dollars ($100.00), to be set by the board for the issuance of a license.

(b) Such fees shall be set in such an amount as to reimburse the state to the extent feasible for the cost of the services rendered.

(c) Any increase in the fee charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65.

(6) Collect funds.

(a) The administration of the provisions of this chapter shall be financed from income accruing from fees, licenses and other charges assessed and collected by the board in administering this chapter.

(b) The board shall receive and account for all funds received and shall keep such funds in a separate fund.

(c) Funds collected under the provisions of this chapter shall be used solely for the expenses of the advisory council and the board to administer the provisions of this chapter. Such funds shall be subject to audit by the State Auditor.

(d) Members of the advisory council shall receive no compensation for services performed on the council, but may be reimbursed for necessary and actual expenses incurred in connection with attendance at meetings of the council or for authorized business of the council from funds made available for such purpose, as provided in Section 25-3-41.

(7) Receive and process complaints.

(a) The board shall have full authority to investigate and evaluate each and every applicant applying for a license to practice dietetics, with the advice of the advisory council.

(b) The board shall have the authority to issue subpoenas, examine witnesses and administer oaths, and shall, at its discretion, investigate allegations or practices violating the provisions of this chapter, and in so doing shall have power to seek injunctive relief to prohibit any person from providing professional dietetic services as defined in Section 73-10-3(1)(j) without being licensed as provided herein.

(8) A license certificate issued by the board is the property of the board and must be surrendered on demand.

SOURCES: Laws, 1986, ch. 453, § 11; Laws, 1994, ch. 400, § 8; Laws, 1996, ch. 507, § 36; reenacted and amended, Laws, 2000, ch. 483, § 11; reenacted without change, Laws, 2002, ch. 620, § 11; Laws, 2007, ch. 309, § 10; Laws, 2016, ch. 510, § 45, eff from and after July 1, 2016.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides:
"SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment, in (3), added the next-to-last sentence of (b) and the last sentence of (c); added (5)(c); and made a minor stylistic change.

Cross References — Suspension of State-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 35, 37, 42-50.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 21 et seq, 41 et seq., 73.

CJS. 53 C.J.S., Licenses §§ 82 et seq., 125-132.

§ 73-10-23. Penalties for violations.

Any person who violates any provision of this chapter shall, upon conviction thereof, be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or imprisoned in the county jail for a period not exceeding six (6) months, or both.

SOURCES: Laws, 1986, ch. 453, § 12; reenacted without change, Laws, 2000, ch. 483, § 12; reenacted without change, Laws, 2002, ch. 620, § 12, eff from and after July 1, 2002.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 42-50.

CJS. 53 C.J.S., Licenses §§ 121-124.

§ 73-10-25. Repealed.

Repealed by Laws of 2002, ch. 620, § 13, eff from and after July 1, 2002.

[Laws, 1994, ch. 400, § 9; Laws, 2000, ch. 483, § 13, eff from and after June 30, 2000.]

Editor's Note — Former § 73-10-25 contained a repealer for the Mississippi Dietetics Practice Act, §§ 73-10-1 through 73-10-23.

CHAPTER 11

Practice of Funeral Service and Funeral Directing

State Board of Embalming. [Repealed]
State Board of Funeral Service 73-11-33

STATE BOARD OF EMBALMING [REPEALED]

Sec.
73-11-1 through 73-11-31. Repealed.

§§ 73-11-1 through 73-11-31. Repealed.

Repealed by Laws of 1983, ch. 351, § 16, eff from and after July 1, 1984.

§ 73-11-1. [Codes, Hemingway's 1921 Supp, § 4493a; 1930, § 4622; 1942, § 8776; Laws, 1918, ch. 223; Laws, 1975, ch. 446, § 1]

§ 73-11-3. [Codes, Hemingway's 1921 Supp, § 4493c; 1930, § 4623; 1942, § 8777; Laws, 1918, ch. 223]

§ 73-11-5. [Codes, Hemingway's 1921 Supp, § 4493d; 1930, § 4624; 1942, § 8778; Laws, 1918, ch. 223]

§ 73-11-7. [Codes, Hemingway's 1921 Supp, § 4493e; 1930, § 4625; 1942, § 8779; Laws, 1918, ch. 223]

§ 73-11-9. [Codes, Hemingway's 1921 Supp, § 4493f; 1930, § 4626; 1942, § 8780; Laws, 1918, ch. 223]

§ 73-11-11. [Codes, Hemingway's 1921 Supp, § 4493g; 1930, § 4627; 1942, § 8781; Laws, 1918, ch. 223; 1932, ch. 337]

§ 73-11-13. [Codes, Hemingway's 1921 Supp, § 4493h; 1930, § 4628; 1942, § 8782; Laws, 1918, ch. 223]

§ 73-11-15. [Codes, Hemingway's 1921 Supp, § 4493i; 1930, § 4629; 1942, § 8783; Laws, 1918, ch. 223]

§ 73-11-17. [Codes, Hemingway's 1921 Supp, § 4493j; 1930, § 4630; 1942, § 8784; Laws, 1918, ch. 223; Laws, 1975, ch. 446, § 2]

§ 73-11-19. [Codes, Hemingway's 1921 Supp, § 4493k; 1930, § 4631; 1942, § 8785; Laws, 1918, ch. 223; Laws, 1922, ch. 254]

§ 73-11-21. [Codes, 1942, § 8786.5; Laws, 1971, ch. 409, §§ 1, 2]

§ 73-11-23. [Codes, Hemingway's 1921 Supp, § 4493l; 1930, § 4632; 1942, § 8786; Laws, 1918, ch. 223]

§ 73-11-25. [Codes, Hemingway's 1921 Supp, § 4493m; 1930, § 4633; 1942, § 8787; Laws, 1918, ch. 223]

§ 73-11-27. [Codes, Hemingway's 1921 Supp, § 4493n; 1930, § 4634; 1942, § 8788; Laws, 1918, ch. 223; 1922, ch. 254]

§ 73-11-29. [Codes, Hemingway's 1921 Supp, § 4493o; 1930, § 4635; 1942, § 8789; Laws, 1918, ch. 223]

§ 73-11-31. [Codes, Hemingway's 1921 Supp, § 4493p; 1930, § 4636; 1942, § 8790; Laws, 1918, ch. 223; Laws, 1975, ch. 446, § 31]

Editor's Note — Former § 73-11-1 provided for membership on the state board of embalming.

Former § 73-11-3 provided for appointment to the state embalming board.

Former § 73-11-5 listed the powers and duties of the state embalming board.

Former § 73-11-7 provided for the adoption of rules by the state embalming board.

Former § 73-11-9 provided that the president of the state embalming board was authorized to administer oaths to witnesses testifying before the board.

Former § 73-11-11 provided the requirements for a license to practice embalming.

Former § 73-11-13 provided that applicants for a license to practice embalming are to be examined by the board.

Former § 73-11-15 provided that licenses to practice embalming were to be issued or renewed for a period of one year and were to be non-transferable.

Former § 73-11-17 provided that licenses to practice embalming were to be renewed annually.

Former § 73-11-19 provided for the revocation of licenses to practice embalming.

Former § 73-11-21 provided for the deposit and expenditure of funds by the state embalming board.

Former § 73-11-23 provided for payment of the salaries and expenses of the board members.

Former § 73-11-25 provided that it was unlawful for unlicensed persons to practice embalming.

Former § 73-11-27 provided for the applicability of the provisions of this chapter.

Former § 73-11-29 provided for punishment of violations of the chapter.

Former § 73-11-31 provided that any fines paid for violations of this chapter were to be paid into the public school fund.

STATE BOARD OF FUNERAL SERVICE

SEC.
73-11-33. Repeal of Sections 73-11-41 through 73-11-73.
73-11-41. Definitions [Repealed effective July 1, 2021].
73-11-43. State board of funeral service; membership [Repealed effective July 1, 2021].
73-11-45. Oath of office [Repealed effective July 1, 2021].
73-11-47. Meetings; quorum; removal for nonattendance [Repealed effective July 1, 2021].
73-11-49. Officers; expenses; assistants and employees; assistance of counsel; subpoena power; adoption of rules and regulations [Repealed effective July 1, 2021].
73-11-51. Examination of applicants for license; qualifications; fees; reciprocity; renewal of license; license not assignable or valid for any person other than licensee; exemption for students enrolled in accredited funeral service technology or mortuary science programs [Repealed effective July 1, 2021].
73-11-53. Funeral service or funeral director trainee and apprenticeship program; resident traineeship certificate [Repealed effective July 1, 2021].
73-11-55. Licensing of funeral establishment; license classifications; exceptions; requirements; applications and fees [Repealed effective July 1, 2021].
73-11-56. Schedule of fees [Repealed effective July 1, 2021].
73-11-57. Grounds for refusal to issue or renew license; suspension or revocation of license; complaint procedure; temporary suspension of license; sanctions for violations; hearings; attendance of witnesses; production of books and records; subpoenas; appeal from decision of board or judgment or decree of circuit court; monetary penalties [Repealed effective July 1, 2021].

73-11-57.1.	Authority to revoke, refuse to renew, suspend or place on probation license of funeral home establishment or director under certain circumstances [Repealed effective July 1, 2021].
73-11-58.	Procedure for disposition of decedent's body where no written authorization was left by decedent [Repealed effective July 1, 2021].
73-11-59.	Penalties [Repealed effective July 1, 2021].
73-11-61.	Price list and statement of goods and services must be provided before services rendered [Repealed effective July 1, 2021].
73-11-63.	Application of provisions to cemeteries or cemetery chapels; chapter does not interfere with religious ceremonies or customs [Repealed effective July 1, 2021].
73-11-65.	Funeral service interments must be under supervision of Mississippi licensed funeral director or funeral service licensee [Repealed effective July 1, 2021].
73-11-67.	Retail sellers of caskets required to register annually with board; procedure for disciplinary proceedings [Repealed effective July 1, 2021].
73-11-69.	Licensing and regulation of crematory facilities [Repealed effective July 1, 2021].
73-11-71.	Intermingling of cremated remains prohibited; written acknowledgment from person entitled to control disposition of remains; content of acknowledgment [Repealed effective July 1, 2021].
73-11-73.	Removal of body from place of death, embalming body, or cremating body without permission of next of kin prohibited; picking up or removing body on first call; written record of oral consent for embalming or cremation required [Repealed effective July 1, 2021].

§ 73-11-33. Repeal of Sections 73-11-41 through 73-11-73.

Sections 73-11-41 through 73-11-73, which create the State Board of Funeral Service and prescribe its duties and powers, shall stand repealed on July 1, 2021.

SOURCES: Laws, 1979, ch. 301, § 25; Laws, 1979, ch. 357, § 11; Laws, 1983, ch. 351, § 15; Laws, 1991, ch. 463, § 1; Laws, 1993, ch. 499, § 1; Laws, 1995, ch. 387, § 1; Laws, 1999, ch. 377, § 1; Laws, 2002, ch. 497, § 1; Laws, 2005, ch. 542, § 1; Laws, 2008, ch. 514, § 11; Laws, 2012, ch. 466, § 1; Laws, 2017, ch. 373, § 1, eff from and after July 1, 2017.

Editor's Note — Laws of 1979, ch. 301, § 55, provides as follows:

"SECTION 55. The codifier of this act is hereby authorized and directed to codify Sections 16 through 54 of this act with the enabling legislation of the governmental units which are affected by said sections."

Amendment Notes — The 2017 amendment substituted "73-11-73" for "73-11-71" and extended the date of the repealer for §§ 73-11-41 through 73-11-73 by substituting "repealed on July 1, 2021" for "repealed as of July 1, 2017."

RESEARCH REFERENCES

ALR. Liability for injury or damages resulting from operation of vehicle in funeral procession or in procession which is claimed to have such legal status. 52 A.L.R.5th 155.

§ 73-11-41. Definitions [Repealed effective July 1, 2021].

The following terms shall have the meanings ascribed herein unless the context shall otherwise require:

(a) "Alternative container" is an unfinished wood box or other nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed wood, composition materials (with or without an outside covering) or like materials.

(b) "Board" means the State Board of Funeral Service of the State of Mississippi as created by Section 73-11-43, or any successor thereof.

(c) "Branch establishment" means an auxiliary facility or division of a main funeral establishment licensed under this chapter that is within seventy-five (75) miles of the main facility.

(d) "Casket" is defined as a rigid container that is designed for the encasement of human remains and that is usually constructed of wood, metal, fiberglass, plastic or like material and ornamented and lined with fabric which may or may not be combustible.

(e) "Cremation" means a two-part procedure whereby a dead human body or body parts shall be reduced by direct flame to residue which includes bone fragments and the pulverization of said bone fragments to coarse powdery consistency.

(f) "Crematory" is defined as any person, partnership or corporation that performs cremation. A crematory must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules and regulations adopted by the board.

(g) "Certified crematory operator" means an individual who has completed the certification program as approved by the board.

(h) "Crematory operator" means the legal entity that operates a crematory and performs cremations.

(i) "Direct cremation" means a disposition of human remains by cremation without formal viewing, visitation or ceremony with the body present.

(j) "Embalming" means the disinfection of the dead human body by replacing certain body fluids with preserving and disinfecting chemicals.

(k) "First call" means the beginning of the relationship between the consumer and the licensed funeral director, funeral service practitioner and/or funeral establishment to take charge of a dead human body and/or have the body prepared for burial or disposition by embalming, cremation or another method.

(*l*) "Funeral establishment" means a fixed place or premise duly licensed by the board that is devoted to or used in the immediate post-death activities of custody, shelter, care, preparation and/or embalming for final disposition of the body; or used for religious services or other rites or ceremonies associated with the final disposition of the human dead; or maintained or held out to the public by advertising or otherwise as such, for the convenience and comfort of the bereaved and the community for viewing or other services in connection with the human dead, and as the office or place for carrying on the profession of funeral service and/or funeral directing.

(m) "Licensee" means a person or entity who holds a license issued by the board.

(n) "License for funeral establishment" means a license issued to a place or premise devoted to or used in the immediate post-death activities of transportation, custody, shelter, care, preparation and/or embalming for final disposition of the body; or used for religious services or other rites or ceremonies associated with the final disposition of human dead; or maintained for the convenience and comfort of the bereaved and the community for viewing or other services in connection with the human dead, and as the office or place for carrying on the profession of funeral service and/or funeral directing.

(o) "License for the practice of funeral directing" means the license given to a person engaging in the "practice of funeral service" who is not engaged in the practice of embalming.

(p) "License for the practice of funeral service" means the license given to a person engaging in the "practice of funeral service," including the practice of embalming.

(q) "Practice of funeral service" means:

(i) Providing shelter, care and custody of the human dead;

(ii) Conducting immediate post-death activities;

(iii) Preparing of the human dead by embalming or other methods for burial or other disposition;

(iv) Being responsible for the transportation of the human dead, bereaved relatives and friends;

(v) Making arrangements, financial or otherwise, for the providing of such services;

(vi) The sale of funeral merchandise; or

(vii) The practice or performance of any function of funeral directing and/or embalming as presently known, including those stipulated herein.

This definition shall not include persons or corporations engaging only in the preneed sale of funeral merchandise or service.

(r) "Mortuary service establishment" means a place of business where dead human bodies are embalmed or otherwise prepared or held for burial, including the transportation of the bodies.

(s) "Resident trainee" means a person who is preparing to become licensed for the practice of funeral service or funeral directing and who is serving under the supervision and instruction of a person duly licensed for the practice of funeral service or funeral directing in this state.

(t) "Retort" means an enclosed space within which the cremation process takes place.

(u) "Trade embalmer" means an embalmer who does embalming for a licensed funeral establishment.

SOURCES: Laws, 1983, ch. 351, § 1; reenacted and amended, Laws, 1991, ch. 463, § 2; reenacted, Laws, 1993, ch. 499, § 4; reenacted, Laws, 1995, ch. 387, § 2; reenacted without change, Laws, 1999, ch. 377, § 2; reenacted and amended, Laws, 2002, ch. 497, § 2; reenacted and amended, Laws, 2005, ch. 542, § 2; Laws, 2008, ch. 514, § 1; Laws, 2009, ch. 346, § 1; Laws, 2012, ch. 466, § 2; reenacted without change, Laws, 2017, ch. 373, § 2, eff from and after July 1, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (k) by substituting "ceremonies associated with the final disposition of the human dead" for "ceremonies associated with the final disposition of human dead." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — For the repeal date of this section, see § 73-11-33.

Amendment Notes — The 2017 amendment reenacted the section without change.

Cross References — Requirement that body be held at funeral home for autopsy when one is ordered, see § 41-37-9.

Disposition of dead bodies, and The Anatomical Gift Law, see §§ 41-39-1 et seq.

RESEARCH REFERENCES

ALR. Liability for injury or damages resulting from operation of vehicle in funeral procession or in procession which is claimed to have such legal status. 52 A.L.R.5th 155.

Am Jur. 12 Am. Jur. Pl & Pr Forms (Rev), Funeral Directors and Embalmers, Forms 21 et seq. (civil rights and liabilities).

8B Am. Jur. Legal Forms 2d, Funeral Directors and Embalmers §§ 127:16 et seq. (particular instruments).

44 Am. Jur. Proof of Facts 2d 285, Negligent Handling of Dead Body by Funeral Director.

§ 73-11-43. State board of funeral service; membership [Repealed effective July 1, 2021].

There is created the State Board of Funeral Service which shall consist of seven (7) members, one (1) funeral service licensee and one (1) funeral director licensee to be appointed from each Mississippi Supreme Court district. Three (3) members shall have been licensed for the practice of funeral service under this chapter for five (5) consecutive years and/or have had at least five (5) consecutive years' experience as a funeral director and embalmer in this state immediately preceding his appointment. Three (3) members shall have been licensed for the practice of funeral directing under this chapter for five (5) consecutive years and/or have had at least five (5) consecutive years' experience as a funeral director immediately preceding his appointment. One (1) member shall be a public member and be appointed from the public at large. The members of the board shall be appointed by the Governor with the advice and consent of the Senate. All appointments shall be for terms of four (4) years from the expiration date of the previous term. Upon the expiration of his term of office, a board member may continue to serve until his successor has been appointed and confirmed. No board member shall serve more than two (2) consecutive full terms. Vacancies in office shall be filled by appointment by the

Governor in the same manner as the appointment to the position which becomes vacant, subject to the advice and consent of the Senate at the next regular session of the Legislature. Appointments for vacancies in office, except those from the public at large, may be made from a joint list of four (4) qualified persons, two (2) each submitted by the Mississippi Funeral Directors Association and the Mississippi Funeral Directors and Morticians Association. Nothing in this chapter or any other statute shall preclude the members of the State Embalming Board from serving as members of the State Board of Funeral Service.

SOURCES: Laws, 1983, ch. 351, § 2; reenacted and amended, Laws, 1991, ch. 463, § 3; Laws, 1991, ch. 591, § 3; Laws, 1993, ch. 499, § 2; reenacted, Laws, 1995, ch. 387, § 3; reenacted without change, Laws, 1999, ch. 377, § 3; reenacted without change, Laws, 2002, ch. 497, § 3; reenacted without change, Laws, 2005, ch. 542, § 3; Laws, 2012, ch. 466, § 3; reenacted without change, Laws, 2017, ch. 373, § 3, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.
Amendment Notes — The 2017 amendment reenacted the section without change.

§ 73-11-45. Oath of office [Repealed effective July 1, 2021].

The members of the board, before entering upon their duties, shall take and subscribe to the oath of office prescribed for other state officers, which oath shall be administered by properly qualified authority and shall be filed in the Office of the Secretary of State.

SOURCES: Laws, 1983, ch. 351, § 3; reenacted, Laws, 1991, ch. 463, § 4; reenacted, Laws, 1993, ch. 499, § 5; reenacted, Laws, 1995, ch. 387, § 4; reenacted without change, Laws, 1999, ch. 377, § 4; reenacted without change, Laws, 2002, ch. 497, § 4; reenacted without change, Laws, 2005, ch. 542, § 4; reenacted without change, Laws, 2012, ch. 466, § 4; reenacted without change, Laws, 2017, ch. 373, § 4, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.
Amendment Notes — The 2017 amendment reenacted the section without change.

§ 73-11-47. Meetings; quorum; removal for nonattendance [Repealed effective July 1, 2021].

The board shall hold not less than two (2) meetings annually for the purpose of conducting the business of the board and for examining applications for licenses. Four (4) or more members shall comprise a quorum. Any member who shall not attend two (2) consecutive meetings of the board shall be subject to removal by the Governor. The chairman of the board shall notify the Governor in writing when any such member has failed to attend two (2) consecutive regular meetings.

SOURCES: Laws, 1983, ch. 351, § 4; reenacted and amended, Laws, 1991, ch. 463, § 5; reenacted, Laws, 1993, ch. 499, § 6; reenacted, Laws, 1995, ch. 387,

§ 5; reenacted without change, Laws, 1999, ch. 377, § 5; reenacted without change, Laws, 2002, ch. 497, § 5; reenacted without change, Laws, 2005, ch. 542, § 5; reenacted without change, Laws, 2008, ch. 514, § 2; reenacted without change, Laws, 2012, ch. 466, § 5; reenacted without change, Laws, 2017, ch. 373, § 5, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.
Amendment Notes — The 2017 amendment reenacted the section without change.

§ 73-11-49. Officers; expenses; assistants and employees; assistance of counsel; subpoena power; adoption of rules and regulations [Repealed effective July 1, 2021].

(1) The board is authorized to select from its own membership a chairman, vice chairman and secretary-treasurer. Election of officers shall be held at the first regularly scheduled meeting of the fiscal year.

(2) All members of the board shall be reimbursed for their necessary traveling expenses and mileage incident to their attendance upon the business of the board, as provided in Section 25-3-41, and shall receive a per diem as provided in Section 25-3-69 for every day actually spent upon the business of the board, not to exceed twenty (20) days per year unless authorized by a majority vote of the board.

(3) All monies received by the board shall be paid into a special fund in the State Treasury to the credit of the board and shall be used by the board for paying the traveling and necessary expenses and per diem of the members of the board while on board business, and for paying other expenses necessary for the operation of the board in carrying out and involving the provisions of this chapter.

(4) The board shall employ an administrator of the board, who shall have complete supervision and be held responsible for the direction of the office of the board, shall have supervision over field inspections and enforcement of the provisions of this chapter, shall have such other duties as may be assigned by the board, shall be responsible and answerable to the board. The board may employ such other clerical assistants and employees as may be necessary to carry out the provisions of this chapter, and the terms and conditions of such employment shall be determined by the board in accordance with applicable state law and rules and regulations of the State Personnel Board.

(5) Except as otherwise authorized in Section 7-5-39, the board, when it shall deem necessary, shall be represented by an assistant attorney general duly appointed by the Attorney General of this state, and may also request and receive the assistance of other state agencies and county and district attorneys, all of whom are authorized to provide the assistance requested.

(6) The board shall have subpoena power in enforcing the provisions of this chapter.

(7) The board shall adopt and promulgate rules and regulations consistent with law concerning, but not limited to, trainees, apprentices and preceptors, practitioners of funeral service, funeral directors, embalmers and

funeral establishments and branches. These rules and regulations shall not become effective unless promulgated and adopted in accordance with the provisions of the Mississippi Administrative Procedures Law (Section 25-43-1.101 et seq.).

(8) The board may designate the administrator to perform inspections under this chapter, may employ an individual to perform such inspections or may contract with any other individual or entity to perform such inspections. Any individual or entity that performs such inspections shall have the right of entry into any place in which the business or practice of funeral service and/or funeral directing is carried on or advertised as being carried on, for the purpose of inspection, for the investigation of complaints coming before the board and for such other matters as the board may direct.

(9) The board shall not adopt any rule or regulation requiring dead bodies to be embalmed except as required by rule or otherwise by the State Department of Health.

SOURCES: Laws, 1983, ch. 351, § 5; reenacted and amended, Laws, 1991, ch. 463, § 6; reenacted, Laws, 1993, ch. 499, § 7; reenacted, Laws, 1995, ch. 387, § 6; reenacted and amended, Laws, 1999, ch. 377, § 6; reenacted and amended, Laws, 2002, ch. 497, § 6; reenacted and amended, Laws, 2005, ch. 542, § 6; reenacted without change, Laws, 2008, ch. 514, § 3; Laws, 2012, ch. 466, § 6; Laws, 2012, ch. 546, § 32; reenacted without change, Laws, 2017, ch. 373, § 6, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 6 of ch. 466, Laws, 2012, effective July 1, 2012, amended this section. Section 32 of ch. 546, Laws, 2012, effective from and after July 1, 2012, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Editor's Note — For the repeal date of this section, see § 73-11-33.

Amendment Notes — The 2017 amendment reenacted the section without change.

§ 73-11-51. Examination of applicants for license; qualifications; fees; reciprocity; renewal of license; license not assignable or valid for any person other than licensee; exemption for students enrolled in accredited funeral service technology or mortuary science programs [Repealed effective July 1, 2021].

(1) No person shall engage in the business or practice of funeral service, including embalming, and/or funeral directing or hold himself out as transacting or practicing or being entitled to transact or practice funeral service, including embalming, and/or funeral directing in this state unless duly licensed under the provisions of this chapter.

(2) The board is authorized and empowered to examine applicants for licenses for the practice of funeral service and funeral directing and shall issue the proper license to those persons who successfully pass the applicable examination and otherwise comply with the provisions of this chapter.

(3) To be licensed for the practice of funeral directing under this chapter, a person must furnish satisfactory evidence to the board that he or she:

(a) Is at least eighteen (18) years of age;

(b) Has a high school diploma or the equivalent thereof;

(c) Has served as a resident trainee for not less than twenty-four (24) months under the supervision of a person licensed for the practice of funeral service or funeral directing in this state;

(d) Has successfully passed a written and/or oral examination as prepared or approved by the board; and

(e) Is of good moral character.

(4) To be licensed for the practice of funeral service under this chapter, a person must furnish satisfactory evidence to the board that he or she:

(a) Is at least eighteen (18) years of age;

(b) Has a high school diploma or the equivalent thereof;

(c) Has successfully completed twelve (12) months or more of academic and professional instruction from an institution accredited by the United States Department of Education for funeral service education and have a certificate of completion from an institution accredited by the American Board of Funeral Service Education or any other successor recognized by the United States Department of Education for funeral service education;

(d) Has served as a resident trainee for not less than twelve (12) months, either before or after graduation from an accredited institution mentioned above, under the supervision of a person licensed for the practice of funeral service in this state and in an establishment licensed in this state;

(e) Has successfully passed the National Conference of Funeral Examiners examination and/or such other examination as approved by the board; and

(f) Is of good moral character.

(5) All applications for examination and license for the practice of funeral service or funeral directing shall be upon forms furnished by the board and shall be accompanied by an examination fee, a licensing fee and a nonrefundable application fee in amounts fixed by the board in accordance with Section 73-11-56. The fee for an initial license, however, may be prorated in proportion to the period of time from the date of issuance to the date of biennial license renewal prescribed in subsection (8) of this section. All applications for examination shall be filed with the board office at least sixty (60) days before the date of examination. A candidate shall be deemed to have abandoned the application for examination if he does not appear on the scheduled date of examination unless such failure to appear has been approved by the board.

(6) The practice of funeral service or funeral directing must be engaged in at a licensed funeral establishment, at least one (1) of which is listed as the licensee's place of business; and no person, partnership, corporation, associa-

tion or other organization shall open or maintain a funeral establishment at which to engage in or conduct or hold himself or itself out as engaging in the practice of funeral service or funeral directing until such establishment has complied with the licensing requirements of this chapter. A license for the practice of funeral service or funeral directing shall be used only at licensed funeral establishments; however, this provision shall not prevent a person licensed for the practice of funeral service or funeral directing from conducting a funeral service at a church, a residence, public hall, lodge room or cemetery chapel, if such person maintains a fixed licensed funeral establishment of his own or is in the employ of or an agent of a licensed funeral establishment.

(7) Any person holding a valid, unrevoked and unexpired nonreciprocal license in another state or territory having requirements greater than or equal to those of this state as determined by the board may apply for a license to practice in this state by filing with the board a certified statement from the secretary of the licensing board of the state or territory in which the applicant holds his license certifying to his qualifications and good standing with that board. He/she must also successfully pass a written and/or oral examination on the Mississippi Funeral Service licensing law and rules and regulations as prepared or approved by the board, and must pay a nonrefundable application fee set by the board. If the board finds that the applicant has fulfilled aforesaid requirements and has fulfilled substantially similar requirements of those required for a Mississippi licensee, the board shall grant such license upon receipt of a fee in an amount equal to the renewal fee set by the board for a license for the practice of funeral service or funeral directing, as the case may be, in this state. The board may issue a temporary funeral service or funeral directing work permit before a license is granted, before the next regular meeting of the board, if the applicant for a reciprocal license has complied with all requirements, rules and regulations of the board. The temporary permit will expire at the next regular meeting of the board. The issuance of a license or temporary permit by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(8)(a) Except as provided in Section 33-1-39, any person holding a license for the practice of funeral service or funeral directing may have the same renewed for a period of two (2) years by making and filing with the board an application on or before the due date. Payment of the renewal fee shall be in an amount set by the board in accordance with Section 73-11-56. The board shall mail the notice of renewal and the due date for the payment of the renewal fee to the last-known address of each licensee at least thirty (30) days before that date. It is the responsibility of the licensee to notify the board in writing of any change of address. An application will be considered late if the application and proper fees are not in the board's office or postmarked by the due date. Failure of a license holder to receive the notice of renewal shall not exempt or excuse a license holder from the requirement of renewing the license on or before the license expiration date.

(b) If the renewal fee is not paid on or postmarked by the due date, the license of such person shall by operation of law automatically expire and become void without further action of the board. The board may reinstate such license if application for licensure is made within a period of five (5) years, upon payment of the renewal fee for the current year, all renewal fees in arrears, and a reinstatement fee. After a period of five (5) years, the licensee must make application, pay the current renewal fee, all fees in arrears, and pass a written and/or oral examination as prepared or approved by the board.

(9) No license shall be assignable or valid for any person other than the original licensee.

(10) The board may, in its discretion, if there is a major disaster or emergency where human death is likely to occur, temporarily authorize the practice of funeral directing and funeral service by persons licensed to practice in another state but not licensed to practice in this state. Only persons licensed in this state, however, may sign death certificates.

(11) Any funeral service technology or mortuary science program accredited by the American Board of Funeral Service Education in the State of Mississippi, as well as students enrolled in such a program, shall be exempt from licensing under this chapter when embalming or otherwise preparing a deceased human body for disposition as part of a student practicum experience, when the student is directly supervised by an instructor or preceptor who holds a current funeral service license. This exemption shall apply to practicum experiences performed at an accredited institution of funeral service technology or mortuary science program or at a duly licensed funeral establishment or commercial mortuary service. Nothing in this subsection shall be construed to allow any funeral service technology or mortuary science program, or those students enrolled in such a program, to engage in practicum experiences for remuneration.

(12) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Laws, 1983, ch. 351, § 6; reenacted and amended, Laws, 1991, ch. 463, § 7; Laws, 1993, ch. 499, § 3; Laws, 1995, ch. 387, § 7; Laws, 1997, ch. 588, § 39; reenacted and amended, Laws, 1999, ch. 350, § 1; Laws, 2000, ch. 356, § 1; reenacted and amended, Laws, 2002, ch. 497, § 7; reenacted and amended, Laws, 2005, ch. 542, § 7; Laws, 2007, ch. 309, § 11; Laws, 2008, ch. 514, § 4; Laws, 2012, ch. 466, § 7; Laws, 2013, ch. 350, § 13; reenacted without change, Laws, 2017, ch. 373, § 7, eff from and after July 1, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in [former] paragraph (c) of subsection (8). The words "renewable in a biennial basis" were changed to "renewable on a biennial basis". The Joint Committee ratified the correction at its May 20, 1998, meeting.

Section 1 of ch. 350, Laws of 1999, effective July 1, 1999, amended this section. Section 7 of ch. 377, Laws, 1999, effective July 1, 1999, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the April 28, 1999, meeting of the Committee.

Editor's Note — For the repeal date of this section, see § 73-11-33.

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Amendment Notes — The 2017 amendment reenacted the section without change.

Cross References — Requirement that body be held at funeral home for autopsy when one is ordered, see § 41-37-9.

Authority of funeral service licensee to perform eye enucleations, see § 41-39-11.

Resident trainee for practice of funeral service or funeral directing, see § 73-11-53.

Licensing of funeral establishment, see § 73-11-55.

Schedule of fees, see § 73-11-56.

Sanctions for fraud or deception in applying for license or passing examination, see § 73-11-57.

Comparable Laws from other States — Alabama: Code of Ala. § 34-13-51.

Arkansas: A.C.A. § 17-29-310.

Florida: Fla. Stat. § 497.390.

Georgia: O.C.G.A. § 43-18-42.

Louisiana: La. R.S. § 37:842.

North Carolina General Statutes, § 90-210.25.

South Carolina: S.C. Code Ann. § 40-19-235.

Tennessee: Tenn. Code Ann. § 62-5-311.

Texas: Tex. Occ. Code § 651.259.

West Virginia: W. Va. Code § 30-6-12..

JUDICIAL DECISIONS

1. Requirements.

Trial court erred in overturning a board's denial of an application for a funeral service license where the applicant stated that he planned to do his training in Mississippi, as required by Miss. Code Ann. § 73-11-51(4)(d), but actually worked in Tennessee; the evidence was more than sufficient to establish the applicant's unprofessional conduct, as defined by § 73-11-57(1)(n)(v). Miss. State Bd. of Funeral Servs. v. Coleman, 944 So. 2d 92 (Miss. Ct. App. 2006), writ of certiorari denied by 946 So. 2d 368, 2006 Miss. LEXIS 730 (Miss. 2006).

§ 73-11-53. Funeral service or funeral director trainee and apprenticeship program; resident traineeship certificate [Repealed effective July 1, 2021].

(1) The State Board of Funeral Service is authorized to establish a trainee and apprenticeship program whereby persons desiring to apprentice as a funeral service or funeral director trainee may be issued a resident traineeship certificate to practice funeral directing or funeral service under the direct on-premises supervision of a sponsoring Mississippi licensed funeral director or funeral service practitioner.

(2) A person desiring to become a resident trainee for the practice of funeral service or funeral directing shall make application to the board. Such application shall be verified by the licensee under whom the applicant is serving, and shall be accompanied by a nonrefundable application fee in an

amount set by the board in accordance with Section 73-11-56. When the board is satisfied as to the qualifications of an applicant, it shall issue a certificate of resident traineeship.

(3) The board shall have the power to suspend or revoke a certificate of a resident traineeship for violation of any provision of this chapter.

(4) A resident trainee must serve the apprenticeship in a funeral establishment that is licensed by the State of Mississippi and the preceptor must be a Mississippi licensed funeral service practitioner or funeral director who is employed by a Mississippi licensed funeral establishment and actively practicing within the State of Mississippi. The funeral service trainee and apprenticeship program shall be completed within no less than twelve (12) months or more than eighteen (18) months under the direct supervision of a funeral director or funeral service licensee of the board. The funeral director trainee and apprenticeship program shall be completed within no less than twenty-four (24) months or more than thirty (30) months under the direct supervision of a funeral director or funeral service licensee of the board. The board may not adopt any rule that shall require a trainee for funeral directing or funeral service to be employed more than sixty-four (64) hours per month.

(5) A resident trainee may serve under the supervision of more than one (1) preceptor under conditions established by board rules and regulations. The board may also adopt rules that will allow training at more than one (1) funeral establishment under special circumstances.

(6) A resident traineeship certificate shall be valid for one (1) year. The board may renew a resident traineeship certificate if the trainee applies for renewal on a form provided by the board, shows that the training activity continues to satisfy applicable requirements and pays a renewal fee as set by the board. The fee and application will be considered late if the fee and application are not in the office or show a postmark of December 31. Applications received late may be reinstated by the payment of a renewal fee, a reinstatement fee and other applicable fees. Failure to receive a renewal notice does not exempt a resident trainee from the required renewal of his/her traineeship.

(7) A resident trainee shall not advertise or hold himself out as a funeral director, funeral service practitioner, embalmer or use any other title or abbreviation indicating that the trainee is a funeral director, funeral service practitioner or embalmer. A resident trainee does not have the rights and duties of a funeral director or funeral service licensee and is only authorized to act under the direct supervision of the approved preceptor.

SOURCES: Laws, 1983, ch. 351, § 7; reenacted and amended, Laws, 1991, ch. 463, § 8; reenacted, Laws, 1993, ch. 499, § 8; reenacted, Laws, 1995, ch. 387, § 8; reenacted without change, Laws, 1999, ch. 377, § 8; reenacted and amended, Laws, 2002, ch. 497, § 8; reenacted and amended, Laws, 2005, ch. 542, § 8; Laws, 2008, ch. 514, § 5; Laws, 2012, ch. 466, § 8; reenacted without change, Laws, 2017, ch. 373, § 8, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.

Amendment Notes — The 2017 amendment reenacted the section without change.

Cross References — Schedule of fees, see § 73-11-56.

§ 73-11-55. Licensing of funeral establishment; license classifications; exceptions; requirements; applications and fees [Repealed effective July 1, 2021].

(1) No person or party shall conduct, maintain, manage or operate a funeral establishment or branch thereof unless a license for each such establishment has been issued by the board and is conspicuously displayed in such funeral establishment. In case of funeral services held in any private residence, church, cemetery, cemetery chapel, cemetery facility, or lodge hall, no license shall be required.

(2) There shall be four (4) funeral establishment license classifications:

(a) Full-service funeral establishment;

(b) Branch establishment;

(c) Mortuary service establishment; and

(d) Crematory establishment.

(3) To be licensed as a funeral establishment, a place or premise must be at a fixed and specified address or location and must be used for immediate post-death activities, whether used for the custody, shelter, care, preparation and/or embalming of the human dead. Every funeral establishment shall be under the charge and personal supervision of a Mississippi funeral director licensee or a Mississippi funeral service licensee. The licensee in charge and the licensee with personal supervisory responsibilities need not be the same licensee. Each licensed funeral establishment shall be inspected at least once during each licensing period. Such inspections may be unannounced. After inspection of a funeral establishment, if the board cites the funeral establishment for failure to comply with any provision of this chapter or a rule or regulation of the board, the funeral establishment shall resolve the violation to the satisfaction of the board and be in full compliance with this chapter and board rules and regulations not later than thirty (30) days after the board files the inspection report.

(4)(a) A funeral establishment where embalming is conducted must contain an embalming room with a sanitary floor, walls and ceiling, adequate sanitary drainage and disposal facilities, including running water and exhaust fans. A full-service funeral establishment must also have an adequate casket and/or vault selection room, holding facilities and proper room or rooms in which rites and ceremonies may be held. A funeral establishment shall be subject to an inspection at least once during a two-year license period. Each new establishment must be inspected before the opening. All portions of each facility licensed under this section shall be kept in a clean and sanitary condition.

(b)(i) A branch establishment must contain an office and/or an arrangement room, and a room for viewing and/or a chapel or proper place for ceremonies. A branch establishment need not meet all requirements specified in paragraph (a) of this subsection and need not be under the personal supervision of a Mississippi funeral director licensee or a Mississippi funeral service licensee.

(ii) If the branch meets all requirements of a funeral establishment as specified in paragraph (a) of this subsection, such establishment must be under the charge and personal supervision of a Mississippi funeral director licensee or a Mississippi funeral service licensee.

(c) A commercial mortuary service is a funeral establishment that embalms and transports for licensed funeral establishments and does not sell any services or merchandise directly or at retail to the public. A mortuary service establishment shall not arrange or conduct a funeral or direct burial. A mortuary service establishment may arrange for and transport dead human bodies for direct cremation purposes only under the following circumstances:

(i) On behalf of a full-service funeral establishment;

(ii) On behalf of a branch funeral establishment; or

(iii) At the direction of a public administrator, medical examiner, coroner or any other public official charged with arranging the final disposition of dead human bodies.

(d) A crematory establishment shall have the authority to cremate dead human bodies and to transport dead human bodies to and from the establishment and shall meet the requirements of Section 73-11-69. An establishment licensed only as a crematory establishment is prohibited from the care and preparation of dead human bodies other than by cremating and shall also be prohibited from embalming, making funeral arrangements or cremation arrangements with any person or party that is not licensed by the board, conducting visitations and funeral ceremonies, and furnishing any funeral service in connection with the disposition of dead human bodies or selling funeral merchandise.

(5) Applications for funeral establishment licenses, branch establishment licenses or commercial mortuary service licenses shall be made on blanks furnished by the board and shall be accompanied by a fee in an amount fixed by the board under Section 73-11-56. All establishment licenses shall be issued for a period of two (2) years, except initial licenses may be prorated from the date of issuance to the next renewal date.

Renewal funeral establishment and branch establishment license applications and license fees shall be due and payable to the board on or before the expiration date of the license. The board shall mail the notice of renewal and the due date for payment of the renewal fee at least thirty (30) days before that date. Failure of the license holder to receive the notice of renewal shall not exempt or excuse the holder from the requirement of renewing the license on or before the license expiration date.

(6) If the renewal fee is not paid on or postmarked by the due date, the license shall by operation of law automatically expire and become void without further action of the board. All establishments whose licenses have expired under this section may be reinstated by filing with the board an application for reinstatement, submitting to an inspection during which time the licensee in

charge of such establishment shall be interviewed by the board or its designee and by paying all renewal fees, a reinstatement fee, and other applicable fees.

(7) No license shall be assignable or transferable or valid for any establishment other than the original licensee. License fees and application fees are nonrefundable.

(8) A license for each new establishment shall not be issued until an inspection has been made, license and inspection fees have been paid, and the licensee in charge and/or owners of such establishment has been interviewed by the board or its designee.

(9) The board is authorized to establish rules and regulations for the issuance of a special funeral establishment work permit.

SOURCES: Laws, 1983, ch. 351, § 8; reenacted and amended, Laws, 1991, ch. 463, § 9; reenacted, Laws, 1993, ch. 499, § 9; reenacted, Laws, 1995, ch. 387, § 9; reenacted without change, Laws, 1999, ch. 377, § 9; reenacted and amended, Laws, 2002, ch. 497, § 9; reenacted and amended, Laws, 2005, ch. 542, § 9; Laws, 2008, ch. 514, § 6; Laws, 2012, ch. 466, § 9; reenacted without change, Laws, 2017, ch. 373, § 9, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.

Amendment Notes — The 2017 amendment reenacted the section without change.

Cross References — Requirement that body be held at funeral home for autopsy when one is ordered, see § 41-37-9.

Licensing for practice of funeral service directing, see § 73-11-51.

Sanctions for fraud or deception in applying for license, see § 73-11-57.

RESEARCH REFERENCES

ALR. Liability for injury or damages resulting from operation of vehicle in funeral procession or in procession which is claimed to have such legal status. 52 A.L.R.5th 155.

§ 73-11-56. Schedule of fees [Repealed effective July 1, 2021].

On or before October 1 of each year, the board shall determine the amount of funds that will be required during the next ensuing two (2) years to properly administer the laws which the board is directed to enforce and administer and by rule and regulation shall fix fees in such reasonable sums as may be necessary for such purposes within the following limitations:

Funeral establishment:

Application fee, for a new or change of ownership establishment	$ 500.00
Inspection fee	$ 75.00
Renewal application and licensee fee	$ 300.00
Commercial mortuary service license fee for a new or change of ownership	$ 500.00
Renewal application and licensee fee	$ 300.00
Crematory application fee for a new or change of ownership	$ 500.00
Renewal application and license fee	$ 300.00

Special work permit	$ 150.00
Funeral service:	
Initial application fee	$ 50.00
Reciprocal application fee	$ 200.00
Renewal license and application fee	$ 125.00
Work permit	$ 50.00
Funeral director:	
Initial application fee	$ 50.00
Reciprocal application fee	$ 200.00
Renewal license and application fee	$ 100.00
Work permit	$ 50.00
Certified crematory operator:	
Initial application fee	$ 100.00
Renewal license and application fee	$ 100.00
Resident trainee certificate:	
Funeral service application fee	$ 50.00
Funeral director application fee	$ 50.00
Funeral service renewal application fee	$ 50.00
Funeral director renewal application fee	$ 50.00
Other fees:	
Certification fee	$ 50.00
Duplicate license fee	$ 25.00
Reinstatement of lapsed license fee, equal to the amount of the applicable license fee (or the amount of the application fee for the resident trainees).	
Late fee equal to the amount of the applicable license fee (or the amount of the application fee for the resident trainees).	
Public records of the board per page	$ 1.00

All licenses will have a reinstatement and late fee added to the renewal fee if the payment is not in the board's office or postmarked by the due date.

At least thirty (30) days prior to the expiration date of any license issued by the board, the board shall notify the licensee of the applicable renewal fee therefor.

SOURCES: Laws, 1991, ch. 463, § 10; reenacted, Laws, 1993, ch. 499, § 10; reenacted, Laws, 1995, ch. 387, § 10; reenacted without change, Laws, 1999, ch. 377, § 10; reenacted and amended, Laws, 2002, ch. 497, § 10; reenacted and amended, Laws, 2005, ch. 542, § 10; Laws, 2008, ch. 514, § 7; Laws, 2012, ch. 466, § 10; reenacted without change, Laws, 2017, ch. 373, § 10, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.

Amendment Notes — The 2017 amendment reenacted the section without change.

§ 73-11-57. Grounds for refusal to issue or renew license; suspension or revocation of license; complaint procedure; temporary suspension of license; sanctions for violations; hearings; attendance of witnesses; production of books and records; subpoenas; appeal from decision of board or judgment or decree of circuit court; monetary penalties [Repealed effective July 1, 2021].

(1) The board, upon satisfactory proof at proper hearing and in accordance with the provisions of this chapter and the regulations of the board, may suspend, revoke, or refuse to issue or renew any license under this chapter, reprimand or place the holder of a license on a term of probation, and/or take any other action in relation to a license as the board may deem proper under the circumstances upon any of the following grounds:

(a) The employment of fraud or deception in applying for a license or in passing the examination provided for in this chapter;

(b) The erroneous issuance of a license to any person;

(c) The conviction of a felony by any court in this state or any federal court or by the court of any other state or territory of the United States; having been convicted of or pled guilty to a felony in the courts of this state or any other state, territory or country which would prevent a person from holding elected office. Conviction, as used in this paragraph, shall include a deferred conviction, deferred prosecution, deferred sentence, finding or verdict of guilt, an admission of guilty, or a plea of nolo contendere;

(d) The practice of embalming under a false name or without a license for the practice of funeral service;

(e) The impersonation of another funeral service or funeral directing licensee;

(f) The permitting of a person other than a funeral service or funeral directing licensee to make arrangements for a funeral and/or form of disposition;

(g) Violation of any provision of this chapter or any rule or regulation of the board;

(h) Having had a license for the practice of funeral service or funeral directing suspended or revoked in any jurisdiction, having voluntarily surrendered his license in any jurisdiction, having been placed on probation in any jurisdiction, having been placed under disciplinary order(s) or other restriction in any manner for funeral directing and/or funeral service, or operating a funeral establishment (a certified copy of the order of suspension, revocation, probation or disciplinary action shall be prima facie evidence of such action);

(i) Solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether such solicitation occurs after death or when death is imminent; if the person solicited has made known a desire not to receive the communication, or if the solicitation involves coercion, duress or harassment, or if the solicitation takes place at the residence of the client or prospective client and is uninvited by the client or prospective client and has not been previously agreed to by the client or prospective client; however, this shall not be deemed to prohibit general advertising;

(j) Employment directly or indirectly of any apprentice, agent, assistant, employee, or other person, on a part-time or full-time basis or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;

(k) Failure to give full cooperation to the board and/or its designees, agents or other representatives in the performance of official duties of the board. Such failure to cooperate includes, but is not limited to:

(i) Not furnishing any relevant papers or documents requested by or for the board;

(ii) Not furnishing, in writing, an adequate explanation covering the matter contained in a complaint filed with the board;

(iii) Not responding without cause to subpoenas issued by the board, whether or not the licensee is the party charged in any preceding before the board;

(iv) Not reasonably providing access, as directed by the board for its authorized agents or representatives seeking to perform reviews or inspections at facilities or places utilized by the license holder in the practice of funeral service or funeral directing and/or in performing any other activity regulated by the board under this chapter;

(v) Failure to provide information within the specified time allotted and as required by the board and/or its representatives or designees;

(vi) Failure to cooperate with the board or its designees or representatives in the investigation of any alleged misconduct or interfering with a board investigation by willful misrepresentation of facts;

(vii) Deceiving or attempting to deceive the board regarding any matter under investigation, including altering or destroying any records; and

(viii) Failure, without good cause, to cooperate with any request by the board to appear before it;

(*l*) Knowingly performing any act that in any way assists an unlicensed person to practice funeral service or funeral directing;

(m) Knowingly making a false statement on death certificates;

(n) Conviction of a crime involving moral turpitude;

(o) Violating any statute, ordinance, rule or regulation of the state or any of its boards, agencies or political subdivisions affecting the registration of deaths or the handling, custody, care or transportation of dead human bodies; or

(p) Unprofessional conduct in the practice of funeral service or funeral directing which includes, but is not limited to:

(i) Retaining a dead human body for the payment of a fee for the performance of services that are not authorized;

(ii) Knowingly performing any act which in any way assists an unlicensed person to practice funeral service or funeral directing;

(iii) Being guilty of any dishonorable conduct likely to deceive, defraud or harm the public;

(iv) Any act or omission in the practice of funeral service or directing which constitutes dishonesty, fraud or misrepresentation with the intent to benefit the licensee, another person or funeral establishment, or with the intent to substantially injure another person, licensee or funeral establishment; or

(v) Any act or conduct, whether the same or of a different character than specified above, which constitutes or demonstrates bad faith, incompetency or untrustworthiness; or dishonest, fraudulent or improper dealing; or any other violation of the provisions of this chapter, the rules and regulations established by the board or any rule or regulation promulgated by the Federal Trade Commission relative to the practice of funeral service or funeral directing.

(2) Any person, including a member of the board, may initiate a complaint against a licensee of the board by filing with the board a written complaint on a form prescribed by the board.

(a) Upon receipt of a properly verified complaint, the board shall send a copy of the complaint to the affected licensee by certified mail to the address of such licensee appearing of record with the board. The licensee shall answer the complaint in writing within twenty (20) days after receipt of the complaint. The licensee shall mail a copy of his, her or its response to the board and the complainant. Upon receipt of the licensee's response or lapse of twenty (20) days, the board is authorized to investigate a complaint that appears to show the existence of any of the causes or grounds for disciplinary action as provided in Section 73-11-57. Upon finding reasonable cause to believe that the charges are not frivolous, unfounded or filed in bad faith, the board may, in its discretion, cause a hearing to be held, at a time and place fixed by the board, regarding the charges that a violation of this chapter has occurred. The board shall order a hearing for the licensee to appear and show cause why he/she should not be disciplined for a violation of this chapter.

(b) The board shall give the complainant and the affected licensee twenty (20) days' notice of any hearing upon a complaint. Such notice shall be by United States certified mail.

(c) Any party appearing before the board may be accompanied by counsel.

(d) Before commencing a hearing, the chairman or designee of the board shall determine if all parties are present and ready to proceed. If the complainant fails to attend a hearing without good cause shown, the complaint shall be dismissed summarily and all fees and expenses of convening the hearing shall be assessed to, and paid by, the complainant. If any affected licensee fails to appear for a hearing without good cause shown, such licensee shall be presumed to have waived his right to appear before the board and be heard.

(e) Upon the chair's determination that all parties are ready to proceed, the chair or designee shall call the hearing to order and the complainant and the licensee may give opening statements. The board may order the sequestration of nonparty witnesses.

(f) The complainant shall then present his, her or its complaint. The licensee, any counsel and any member or designee of the board may ask questions of witnesses.

(g) The licensee shall then present his, her or its case in rebuttal. The complainant, any counsel and any member or designee of the board may ask questions of witnesses.

(h) At the completion of the evidence, all parties may give closing statements.

(i) At the conclusion of the hearing, the board may either decide the issue at that time or take the case under advisement for further deliberation. The board shall render its decision not more than ninety (90) days after the close of the hearing and shall forward the decision to the last-known business or residence address of the parties.

(3) The board, on its own motion, may file a formal complaint against a licensee.

(4) The board may temporarily suspend a license under this chapter without any hearing, simultaneously with the institution of proceedings under this section, if it finds that the evidence in support of the board's determination is clear, competent and unequivocal and that the licensee's continuation in practice would constitute an imminent danger to public health and safety.

(5) The board may, upon satisfactory proof that the applicant or licensee has been guilty of any of the offenses above enumerated, take the action authorized by this section against an applicant or licensee of the board upon a majority vote of the board members, after a hearing thereon. The board is vested with full power and authority to hold and conduct such hearings, compel the attendance of witnesses and the production of books, records and documents, issue subpoenas therefor, administer oaths, examine witnesses, and do all things necessary to properly conduct such hearings. The board may waive the necessity of a hearing if the person accused of a violation admits that he has been guilty of such offense. Any person who has been refused a license or whose license has been revoked or suspended may, within thirty (30) days after the decision of the board, file with the board a written notice stating that he feels himself aggrieved by such decision and may appeal therefrom to the circuit court of the county and judicial district of residence of the person, or if the person is a nonresident of the State of Mississippi, to the Circuit Court of the First Judicial District of Hinds County. The circuit court shall determine the action of the board was in accord or consistent with law, or was arbitrary, unwarranted or an abuse of discretion. The appeal shall be perfected upon filing notice of the appeal with the circuit court and by the prepayment of all costs, including the cost of the preparation of the record of the proceedings by the board. An appeal from the circuit court judgment or decree may be reviewed by the Supreme Court as is provided by law for other appeals. An appeal of a decision or order of the board does not act as a supersedeas.

(6) In addition to any other power that it has, the board may, upon finding that an applicant or licensee has committed any of the violations listed in Section 73-11-57(1), impose a monetary penalty as follows:

(a) For the first violation of any of the subparagraphs of subsection (1) of this section, a monetary penalty of not more than Five Hundred Dollars ($500.00).

(b) For the second violation of any of the subparagraphs of subsection (1) of this section, a monetary penalty of not more than One Thousand Dollars ($1,000.00).

(c) For the third and any subsequent violation of any of the subparagraphs of subsection (1) of this section, a monetary penalty of not more than Five Thousand Dollars ($5,000.00).

(d) For any violation of any of the subparagraphs of subsection (1) of this section, those reasonable costs that are expended by the board in the investigation and conduct of a proceeding for licensure revocation or suspension, including, but not limited to, the cost of process service, court reporters, expert witnesses and investigators.

(7) The power and authority of the board to assess and levy such monetary penalties hereunder shall not be affected or diminished by any other proceeding, civil or criminal, concerning the same violation or violations except as provided in this section.

(8) A licensee shall have the right of appeal from the assessment and levy of a monetary penalty as provided in this section under the same conditions as a right of appeal is provided elsewhere for appeals from an adverse ruling, order or decision of the board.

(9) Any monetary penalty assessed and levied under this section shall not take effect until after the time for appeal shall have expired.

(10) A monetary penalty assessed and levied under this section shall be paid to the board by the licensee upon the expiration of the period allowed for appeal of such penalties under this section or may be paid sooner if the licensee elects.

With the exception of subsection (5)(d) of this section, monetary penalties collected by the board under this section shall be deposited in the State Treasury to the credit of the State Board of Funeral Service. Any monies collected by the board under subsection (5)(d) of this section shall be deposited into the special fund operating account of the board.

(11) When payment of a monetary penalty assessed and levied by the board against a licensee in accordance with this section is not paid by the licensee when due under this section, the board shall have power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county and judicial district of residence of the licensee, or if the licensee is a nonresident of the State of Mississippi, in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(12) In any administrative or judicial proceeding in which the board prevails, the board shall have the right to recover reasonable attorney fees.

(13) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being

out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1983, ch. 351, § 9; reenacted and amended, Laws, 1991, ch. 463, § 11; reenacted, Laws, 1993, ch. 499, § 11; Laws, 1995, ch. 387, § 11; Laws, 1996, ch. 507, § 37; reenacted and amended, Laws, 1999, ch. 377, § 11; reenacted and amended, Laws, 2002, ch. 497, § 11; reenacted and amended, Laws, 2005, ch. 542, § 11; Laws, 2008, ch. 514, § 8; reenacted without change, Laws, 2012, ch. 466, § 11; reenacted without change, Laws, 2017, ch. 373, § 11, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.

Amendment Notes — The 2017 amendment reenacted the section without change.

Cross References — Penalties, see § 73-11-59.

Suspension of State-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

ALR. Liability for injury or damages resulting from operation of vehicle in funeral procession or in procession which is claimed to have such legal status. 52 A.L.R.5th 155.

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

JUDICIAL DECISIONS

1. Unprofessional conduct.

Trial court erred in overturning a board's denial of an application for a funeral service license where the applicant stated that he planned to do his training in Mississippi, as required by Miss. Code Ann. § 73-11-51(4)(d), but actually worked in Tennessee; the evidence was more than sufficient to establish the applicant's unprofessional conduct, as defined by § 73-11-57(1)(n)(v). Miss. State Bd. of Funeral Servs. v. Coleman, 944 So. 2d 92 (Miss. Ct. App. 2006), writ of certiorari denied by 946 So. 2d 368, 2006 Miss. LEXIS 730 (Miss. 2006).

§ 73-11-57.1. Authority to revoke, refuse to renew, suspend or place on probation license of funeral home establishment or director under certain circumstances [Repealed effective July 1, 2021].

The State Board of Funeral Service may revoke, refuse to renew, suspend or place on probation the license of a funeral home establishment or funeral director, or both, if the funeral home or funeral director accepts funds for a preneed funeral contract or other prepayment of funeral expenses without a registration to sell preneed funeral contracts; or is registered to sell preneed funeral contracts and fails to deposit the funds in trust or to timely remit premium payments from consumers to the insurer as provided in Section 75-63-59 and Section 75-63-61, respectively.

The State Board of Funeral Service shall make written notification to the Secretary of State of all license suspensions and revocations issued by the board as well as written notification for all new licenses issued by the board. The Secretary of State shall make written notification to the board of all registration suspensions, revocations, orders of cease and desist, and administrative penalties imposed by the Secretary of State under Article 3, Chapter 11, Title 73, Mississippi Code of 1972.

SOURCES: Laws, 2009, ch. 549, § 16; reenacted without change, Laws, 2012, ch. 466, § 12; reenacted without change, Laws, 2017, ch. 373, § 12, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.

Amendment Notes — The 2017 amendment reenacted the section without change.

§ 73-11-58. Procedure for disposition of decedent's body where no written authorization was left by decedent [Repealed effective July 1, 2021].

(1) If a decedent has left no written authorization for the cremation and/or disposition of the decedent's body as permitted by law, any of the following persons, in the order of priority listed below, may authorize any lawful manner of disposition of the decedent's body by completion of a written instrument:

(a) The person designated by the decedent as authorized to direct disposition pursuant to Public Law No. 109-163, Section 564, as listed on the decedent's United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, if the decedent died during military service, as provided in 10 USC Section 1481(a)(1) through (8), in any branch of the United States Armed Forces, United States Reserve Forces or National Guard.

(b) The surviving spouse.

(c) A surviving child who is at least eighteen (18) years of age.

(d) A grandchild who is at least eighteen (18) years of age.

(e) Either surviving parent.

(f) A surviving sibling who is at least eighteen (18) years of age.

(g) A person acting as a representative of the decedent under a signed authorization of the decedent.

(h) The guardian of the person of the decedent at the time of the decedent's death, if a guardian has been appointed.

(i) A person in the class of the next degree of kinship, in descending order, who, under state law, would inherit the decedent's estate if the decedent died intestate and who is at least eighteen (18) years of age.

(j) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the cremation and disposition.

(k) In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of the institution may serve as the authorizing agent in the absence of any of the above.

(*l*) In the absence of any of the above, any person willing to assume responsibility for the cremation and disposition of the decedent.

(m) In the case of indigents or any other individuals whose final disposition is the responsibility of the state or any of its instrumentalities, a public administrator, medical examiner, coroner, state-appointed guardian, or any other public official charged with arranging the final disposition of the decedent may serve as the authorizing agent.

(2) No funeral establishment shall accept a dead human body from any public officer or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the persons who have the legal authority to direct the disposition of the decedent's body. If any persons are found, their authority and directions shall govern the disposal of the remains of the decedent. Any funeral establishment receiving the remains in violation of this subsection shall make no charge for any service in connection with the remains before delivery of the remains as stipulated by the persons having legal authority to direct the disposition of the body. This section shall not prevent any funeral establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death and rendering necessary professional services required until the persons having legal authority to direct the disposition of the body have been notified.

(3) A person who does not exercise his or her right to dispose of the decedent's body under subsection (1) of this section within five (5) days of notification or ten (10) days from the date of the death, whichever is earlier, shall be deemed to have waived his or her right to authorize disposition of the decedent's body or contest disposition in accordance with this section. If, during the aforesaid time period, the funeral director, funeral service practitioner and/or funeral establishment has been provided contrary written consent from members of the same class with the highest priority as to the

disposition of the decedent's body, the licensed funeral director or service practitioner or funeral establishment shall act in accordance with the directive of the greatest number of consents received from members of the class. If that number is equal, the funeral director or funeral service practitioner and/or the funeral establishment shall act in accordance with the earlier consent unless the person(s) providing the later consent is granted an order from a court of competent jurisdiction in which the funeral establishment is located.

(4) If no consent for the embalming, cremation or other disposition of a dead human body from any of the relatives or interested persons or institutions listed above in subsection (1) is received within ten (10) days of the decedent's death, the coroner for, or other person designated by, the county in which the funeral establishment is located is authorized to sign the consent authorizing the disposition of the decedent's remains.

(5) If none of the parties listed above in subsection (1) is financially capable of providing for the cremation, embalming or disposition of a dead human body, the coroner for, or other person designated by, the county in which the funeral establishment is located is authorized to sign the consent authorizing the disposition of the decedent's remains.

(6) The licensed funeral director, funeral service practitioner or funeral establishment shall have authority to control the disposition of the remains of a decedent and proceed to recover the costs for the disposition when: (a) none of the persons or parties described above in subsection (1)(a) through (*l*) assume responsibility for the disposition of the remains, and (b) the coroner or other public official designated in subsection (1)(m) fails to assume responsibility for disposition of the remains within seven (7) days after having been given written notice of the facts. Written notice may be made by personal delivery, United States mail, facsimile or transmission. The method of disposition must be in the least costly and most environmentally sound manner that complies with law, and that does not conflict with known wishes of the decedent.

(7) A funeral director, funeral service and/or funeral establishment licensee acting in accordance with this section, or attempting in good faith to act in accordance with this section, shall not be subject to criminal prosecution or civil liability for carrying out the otherwise lawful instructions of the person or persons described in this section.

(8) The liability for the reasonable cost of the final disposition of the remains of the decedent devolves upon the individual or entity authorizing the disposition and/or upon the estate of the decedent and, in cases when the county board of supervisors has the right to control the disposition of the remains under this section, upon the county in which the death occurred.

SOURCES: Laws, 2005, ch. 542, § 12; Laws, 2010, ch. 307, § 1; Laws, 2012, ch. 466, § 13; reenacted without change, Laws, 2017, ch. 373, § 13, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.

Amendment Notes — The 2017 amendment reenacted the section without change.

§ 73-11-59. Penalties [Repealed effective July 1, 2021].

Any person, partnership, corporation, association or his or her or its agents or representatives who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of Five Thousand Dollars ($5,000.00), or by imprisonment for not more than six (6) months in the county jail, or by both such fine and imprisonment.

SOURCES: Laws, 1983, ch. 351, § 10; reenacted and amended, Laws, 1991, ch. 463, § 12; reenacted, Laws, 1993, ch. 499, § 12; reenacted, Laws, 1995, ch. 387, § 12; reenacted without change, Laws, 1999, ch. 377, § 12; reenacted without change, Laws, 2002, ch. 497, § 12; reenacted and amended, Laws, 2005, ch. 542, § 13; reenacted without change, Laws, 2012, ch. 466, § 14; reenacted without change, Laws, 2017, ch. 373, § 14, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.

Amendment Notes — The 2017 amendment reenacted the section without change.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Civil liability of undertaker in connection with transportation, burial, or safeguarding of body. 53 A.L.R.4th 360.

Dead bodies: liability for improper manner of reinterment. 53 A.L.R.4th 394.

§ 73-11-61. Price list and statement of goods and services must be provided before services rendered [Repealed effective July 1, 2021].

Every funeral director or funeral service licensee shall provide, before the rendering of services, the funeral establishment's current general price list, casket price list, outer container price list, and a statement of goods and services to the person or persons who authorize the services and is responsible for payment of the expenses therefor, in a manner and format as prescribed by the Federal Trade Commission's Funeral Rule of 1984 and any future changes with regard to required disclosures. The general price list must be made available to any person upon request.

SOURCES: Laws, 1983, ch. 351, § 11; reenacted and amended, Laws, 1991, ch. 463, § 13; reenacted, Laws, 1993, ch. 499, § 13; reenacted, Laws, 1995, ch. 387, § 13; reenacted without change, Laws, 1999, ch. 377, § 13; reenacted and amended, Laws, 2002, ch. 497, § 13; reenacted without change, Laws, 2005, ch. 542, § 14; reenacted without change, Laws, 2012, ch. 466, § 15; reenacted without change, Laws, 2017, ch. 373, § 15, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.

Amendment Notes — The 2017 amendment reenacted the section without change.

Federal Aspects — Federal Funeral Rule, see 16 CFR Part 453.

§ 73-11-63. Application of provisions to cemeteries or cemetery chapels; chapter does not interfere with religious ceremonies or customs [Repealed effective July 1, 2021].

Nothing in this chapter shall be construed to authorize the regulation or licensing of cemeteries or cemetery chapels by the board, except the regulation or licensing of any funeral establishment operated by a cemetery. In addition, nothing in this chapter shall be construed to prevent or interfere with the ceremonies, customs, religious rites or religion of any people, denomination, or sect, or to prevent or interfere with any religious denomination, sect or anybody composed of persons of a denomination, or to prevent or interfere with any church or synagogue from having its committee or committees prepare human bodies for burial or the families, friends or neighbors of deceased persons who prepare and bury their dead without charge.

SOURCES: Laws, 1983, ch. 351, § 12; reenacted, Laws, 1991, ch. 463, § 14; reenacted, Laws, 1993, ch. 499, § 14; reenacted, Laws, 1995, ch. 387, § 14; reenacted without change, Laws, 1999, ch. 377, § 14; reenacted and amended, Laws, 2002, ch. 497, § 14; reenacted and amended, Laws, 2005, ch. 542, § 15; reenacted without change, Laws, 2012, ch. 466, § 16; reenacted without change, Laws, 2017, ch. 373, § 16, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.

Amendment Notes — The 2017 amendment reenacted the section without change.

Cross References — Regulation of cemeteries and burial grounds, see §§ 41-43-1 et seq.

ATTORNEY GENERAL OPINIONS

Because Section 73-11-69 and this section, when giving the words their plain and ordinary meaning, may be read together in a manner which gives effect to each, no conflict exists and the Mississippi State Board of Funeral Services does not have regulatory authority over cemetery crematories. Killebrew-Kenney, June 18, 2003, A. G. Op. 03-0298.

§ 73-11-65. Funeral service interments must be under supervision of Mississippi licensed funeral director or funeral service licensee [Repealed effective July 1, 2021].

Every funeral service or interment, or part thereof, that is conducted in Mississippi must be in the actual charge and under the supervision of a funeral director or funeral service licensee who is licensed under this chapter. However, this section shall not prevent a family from burying its own dead without charge.

SOURCES: Laws, 2002, ch. 497, § 15; reenacted without change, Laws, 2005, ch. 542, § 16; reenacted without change, Laws, 2012, ch. 466, § 17; reenacted without change, Laws, 2017, ch. 373, § 17, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.

Amendment Notes — The 2017 amendment reenacted the section without change.

§ 73-11-67. Retail sellers of caskets required to register annually with board; procedure for disciplinary proceedings [Repealed effective July 1, 2021].

(1) Every person, establishment or company not licensed under this chapter that sells caskets at retail shall register annually with the board. The names of registrants under this section shall be made available to any person upon request during the regular business hours of the board. The procedure for conducting a disciplinary proceeding against any casket retailer accused of failing to register with the board, as well as the penal sanctions available to the board, shall be the same as those set forth in Section 73-11-57.

(2) Any person, establishment or company required to register under subsection (1) of this section that sells preneed contracts for caskets, either directly or indirectly or through an agent, shall be required to meet all of the requirements of Sections 75-63-51 through 75-63-75 that are applicable to preneed contracts for funeral services under those sections. For the purposes of this section, the term "preneed contract for caskets" means any contract, agreement or any series or combination of contracts or agreements, whether funded by trust deposits or insurance, or any combination thereof, that is for the purpose of furnishing or delivering a casket or caskets for the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of.

SOURCES: Laws, 2002, ch. 497, § 16; reenacted and amended, Laws, 2005, ch. 542, § 17; Laws, 2010, ch. 407, § 1; reenacted without change, Laws, 2012, ch. 466, § 18; reenacted without change, Laws, 2017, ch. 373, § 18, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this Section, see § 73-11-33.

Laws of 2010, ch. 407, § 1, effective July 1, 2010, in (2), made retail sellers of preneed contracts for caskets subject to all the requirements of "Sections 75-63-51 through 75-63-75." In Section 75-63-55, retail sellers are subject to the requirements of "this article," which includes Sections 75-63-51 through 75-63-81. The reference, therefore, should probably read "Article 3, Chapter 63, Title 75 of the Mississippi Code of 1972."

Amendment Notes — The 2017 amendment reenacted the section without change.

§ 73-11-69. Licensing and regulation of crematory facilities [Repealed effective July 1, 2021].

(1) No person or party shall conduct, maintain, manage or operate a crematory unless a license for each such crematory has been issued by the board and is conspicuously displayed in such crematory.

(2) The operator of a crematory facility shall issue a certificate of cremation to the family of each person cremated in the facility. In addition, the operator of the crematory facility shall maintain a log of all cremations performed in the facility, and this log shall match the certificates of cremation that have been issued by the facility.

(3) No operator of a crematory facility shall knowingly represent that an urn or temporary container contains the recovered cremated remains of specific decedent or of body parts removed from a specific decedent when it does not. This subsection does not prohibit the making of such a representation because of the presence in the recovered cremated remains of de minimis amounts of the cremated remains of another decedent or of body parts.

(4) The board shall inspect each licensed crematory facility during each licensure period, and at such other times as necessary, to verify that the crematory facility is in compliance with the requirements of this section. Any person who operates a crematory facility in this state without a license, or any person who otherwise violates any provision of this section, is guilty of a felony. Upon conviction for a violation of this section, in addition to any penalty that may be imposed by the court, the board may revoke the person's crematory facility license.

(5) If the retort of a crematory becomes in need of repair, then the operator of the crematory shall notify the board in writing and by telephone within forty-eight (48) hours of discovery of the need to repair, and no cremation shall be made from the time of discovery until satisfactory proof is provided to the board that the repair has been made.

(6) The board may promulgate such rules and regulations as deemed necessary for the proper licensure and regulation of crematory facilities in this state. Such rules and regulations shall include, but not be limited to, the following: crematory facility requirements, identification of deceased human beings, cremation process, processing of remains, comingling of human remains, disposition of cremated remains, removal of human remains and proper documentation requirements as prescribed by state agencies.

(7) Any crematory or funeral establishment may dispose of any remains unclaimed by the family after twelve (12) months after cremation by scattering or burial upon a final notification to the next of kin by certified mail to their last-known address.

(8) The crematory retort operator must be a certified crematory operator as defined in Section 73-11-41.

(9) No crematory facility licensed by the board shall be used for the cremation of deceased animals.

(10) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment, or at any other location consistent with local zoning regulations.

SOURCES: Laws, 2002, ch. 497, § 17; Laws, 2008, ch. 514, § 9; Laws, 2009, ch. 346, § 2; Laws, 2012, ch. 466, § 19; reenacted without change, Laws, 2017, ch. 373, § 19, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.
Amendment Notes — The 2017 amendment reenacted the section without change.

ATTORNEY GENERAL OPINIONS

Because this section and Section 73-11-63, when giving the words their plain and ordinary meaning, may be read together in a manner which gives effect to each, no conflict exists and the Mississippi State Board of Funeral Services does not have regulatory authority over cemetery crematories. Killebrew-Kenney, June 18, 2003, A.G. Op. 03-0298.

§ 73-11-71. Intermingling of cremated remains prohibited; written acknowledgment from person entitled to control disposition of remains; content of acknowledgment [Repealed effective July 1, 2021].

(1) Upon the completion of each cremation, and insofar as is practicable, all of the recoverable residue of the cremation process shall be removed from the crematory and placed in a separate container so that the residue may not be commingled with the cremated remains of other persons. Cremated remains of a dead human shall not be divided or separated without the prior written consent from the person entitled to control the disposition of the cremated remains.

(2) Written acknowledgement from the person entitled to control the disposition of the cremated remains shall be obtained by the person with whom arrangements are made for disposition of the remains on a form that includes, but is not limited to, the following information:

"The human body burns with the casket, container or other material in the cremation chamber. Some bone fragments are not combustible at the incineration temperature and, as a result, remain in the cremation chamber. During the cremation, the contents of the chamber may be moved to facilitate incineration. The chamber is composed of ceramic or other material which disintegrates slightly during each cremation and the produce of that disintegration is commingled with the cremated remains. Nearly all of the contents of the cremation chamber, consisting of the cremated remains, disintegrated chamber material, and small amounts of residue from previous cremations, are removed together and crushed, pulverized or ground to facilitate inurnment or scattering. Some residue remains in the cracks and uneven places of the chamber. Periodically, the accumulation of this residue is removed and interred in a dedicated cemetery property or appropriate area."

The acknowledgment shall be filed and retained for at least three (3) years by the person who disposes of or inters the remains.

SOURCES: Laws, 2008, ch. 514, § 10; Laws, 2009, ch. 346, § 3; Laws, 2012, ch. 466, § 20; reenacted without change, Laws, 2017, ch. 373, § 20, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.
Amendment Notes — The 2017 amendment reenacted the section without change.

§ 73-11-73. Removal of body from place of death, embalming body, or cremating body without permission of next of kin prohibited; picking up or removing body on first call; written record of oral consent for embalming or cremation required [Repealed effective July 1, 2021].

(1) A funeral establishment and its employees, licensees and/or representatives shall not respond to a death call unless properly contacted and requested to so respond. No person or entity subject to regulation under this chapter shall remove or cause to be removed any dead human body from the place of death or take or cause to take custody of a dead human body without the permission of the next of kin or authorized representative, in the order of priority specified in Section 73-11-58, of the deceased.

(2) Dead human bodies may be picked up on first call or removed by a funeral director or funeral service practitioner licensed by the board or under the direction of the licensed funeral director or funeral service practitioner. When a licensed funeral director or funeral service practitioner directs another to make a first call or removal of a dead human body, he accepts, in every manner, full responsibility for all aspects of the first call or removal.

(3) A licensed funeral establishment or other licensee of the board shall not embalm or cremate a dead human body without the prior written or oral consent of the next of kin or authorizing agent or representative of the deceased for each body that is placed under its care and custody. In determining who the proper next of kin is or authorizing agent or representative of the deceased, the order of priority is the same as provided in Section 73-11-58.

(4) The licensed funeral establishment or licensee responsible for the embalming or cremation of the dead human body shall create a written record of an oral consent given under this section that includes all of the following:

(a) The name of the authorizing agent;
(b) The relation of the authorizing agent to the deceased;
(c) The date and time that consent was given;
(d) The name of the person who obtained the consent; and
(e) Any other information required by the board.

SOURCES: Laws, 2012, ch. 466, § 21; brought forward without change, Laws, 2017, ch. 373, § 21, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-11-33.

Amendment Notes — The 2017 amendment brought the section forward without change.

CHAPTER 13

Engineers and Land Surveyors

Engineers 73-13-1
Land Surveyors 73-13-71

ENGINEERS

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§ 73-13-1. Engineer must be registered; use of words "graduate engineer."

In order to safeguard life, health, and property, and to promote the public welfare, any person or firm in either public or private capacity practicing or offering to practice engineering shall hereafter be required to submit evidence that the person or firm is qualified so to practice engineering and shall be licensed as hereinafter provided; and it shall be unlawful for any person or firm to practice or to offer to practice in this state, engineering, as defined in the provisions of Sections 73-13-1 through 73-13-45, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer, unless such person has been duly licensed under the provisions of Sections 73-13-1 through 73-13-45. There is specifically reserved to engineering graduates of all universities and colleges accredited by a regional accrediting body that is recognized by the United States Department of Education, the right to disclose any college degrees received by such individuals and use the words "graduate engineer" on his stationery, business cards and personal communications of any character.

SOURCES: Codes, 1930, § 4658; 1942, § 8791-01; Laws, 1928, Ex. Sess. ch. 56; Laws, 1954, ch. 321, § 1; reenacted and amended, Laws, 1983, ch. 450, § 1; reenacted and amended, Laws, 1991, ch. 470, § 1; reenacted without change, Laws, 1999, ch. 416, § 1; reenacted without change, Laws, 1999, ch. 534, § 1; reenacted and amended, Laws, 2004, ch. 586, § 1, eff from and after July 1, 2004.

Cross References — The authority of a board of supervisors of a county to enter into contracts for professional services with engineers registered by the State Board of Registration for Professional Engineers, see § 19-3-69.

RESEARCH REFERENCES

ALR. What amounts to architectural or engineering services within license requirements. 82 A.L.R.2d 1013.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 29 et seq.

CJS. 53 C.J.S., Licenses §§ 58, 59 et seq.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-3. Definitions.

The term "engineer" as used in Sections 73-13-1 through 73-13-45 shall mean a professional engineer as hereinafter defined.

The term "professional engineer" within the meaning and intent of Sections 73-13-1 through 73-13-45 shall mean a person who has met the qualifications as required under Section 73-13-23(1) and who has been issued a certificate of registration as a professional engineer.

The term "engineer intern" as used in Sections 73-13-1 through 73-13-45 shall mean a candidate for licensure as a professional engineer who has met the qualifications as required under Section 73-13-23(2) and who has been issued a certificate of enrollment as an engineer intern.

The term "practice of engineering" within the meaning and intent of Sections 73-13-1 through 73-13-45 shall mean any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, expert technical testimony, evaluation, planning, design, and design coordination of engineering works and systems, planning the use of land, air and water, performing engineering surveys and studies, and the review of construction for the purpose of monitoring compliance with drawings and specifications, any of which embraces such engineering services or work, either public or private, in connection with any utilities, water resources, structures, buildings, machines, equipment, processes, work systems, projects, communication systems, transportation systems, industrial or consumer products or equipment of control systems; or engineering services or work of a communications, mechanical, electrical, hydraulic, pneumatic, chemical, geotechnical (including geology and geohydrology incidental to the practice of engineering), geological, environmental, or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

Design coordination includes the review and coordination of those technical submissions prepared by others, including as appropriate and without limitation, consulting engineers, surveyors, architects, landscape architects and other professionals working under direction of the engineer.

The term "firm," as used in Sections 73-13-1 through 73-13-45, shall mean a business entity that offers the professional engineering or surveying services to the public of its licensed personnel who are either employees, officers, directors, partners, members or managers. A business entity may be formed as either:

(a) A professional service corporation;

(b) A corporation;

(c) A partnership, including limited partnerships and limited liability partnerships; or

(d) A limited liability company.

Prior to any contract for or the provision of professional engineering or surveying services in this jurisdiction, a firm shall obtain a certificate of authority under Section 73-13-43 or Section 73-13-105 of this chapter. A sole proprietorship, owned and operated by a licensee under this chapter is not required to obtain a certificate of authority under Section 73-13-43 or Section 73-13-105. A professional association of licensed professional engineers or professional surveyors is not required to obtain a certificate of authority under Section 73-13-43 or Section 73-13-105. Both the licensed sole proprietor and the licensees within a professional association shall maintain their individual licenses in active status and only offer the professional services for which they are licensed and qualified to provide.

Engineering surveys include all survey activities required to support the sound conception, planning, design, construction, maintenance and operation of engineered projects but exclude the practice of surveying as defined in Section 73-13-71(d).

A person or firm shall be construed to practice or offer to practice engineering within the meaning and intent of Sections 73-13-1 through 73-13-45, who practices any branch of the profession of engineering; or provides, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer, or through the use of some other title implies that he is a professional engineer; or who holds himself out as able to perform or provide, or who does perform any engineering service or work or any other professional service designated by the practitioner or recognized by educational authorities as engineering.

The term "board" as used in Sections 73-13-1 through 73-13-45 shall mean the Board of Licensure for Professional Engineers and Surveyors provided for by said sections.

SOURCES: Codes, 1930, § 4659; 1942, § 8791-02; Laws, 1928, Ex. Sess. ch. 56; Laws, 1954, ch. 321, § 2; reenacted, Laws, 1983, ch. 450, § 2; reenacted and amended, Laws, 1991, ch. 470, § 2; reenacted without change, Laws, 1999, ch. 416, § 2; reenacted and amended, Laws, 1999, ch. 534, § 2; reenacted and amended, Laws, 2004, ch. 586, § 2, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 2 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 2 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 2 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section. In the definition of "practice of engineering," the comma was added following "expert technical testimony." The Joint Committee ratified the correction at its August 16, 2012, meeting.

Cross References — Regulation of practice of architecture, see §§ 73-1-1 et seq.

JUDICIAL DECISIONS

1. In general.
2. Expert testimony.

1. In general.

One not registered as a professional engineer does not illegally engage in the practice of engineering by calling himself a "mechanical designer" and preparing plans for heating, ventilation, air conditioning and plumbing for buildings under instructions from supervising architects or engineers. State Bd. of Registration for Professional Eng'rs v. Rogers, 239 Miss. 35, 120 So. 2d 772 (1960), error overruled, 239 Miss. 44, 121 So. 2d 720 (1960).

2. Expert testimony.

Engineer may be qualified as an expert witness under Miss. R. Evid. 702 even if he or she is not licensed in Mississippi as an engineer pursuant to Miss. Code Ann. §§ 73-13-1 through 73-13-45. Tellus Operating Group, LLC v. Tex. Petroleum Inv. Co., 105 So. 3d 274 (Miss. 2012).

ATTORNEY GENERAL OPINIONS

The Mississippi State Board of Registration for Professional Engineers and Land Surveyors (MSBRPELS), has the sole authority to adopt regulations, policies or rules identifying which tasks fall within the statutory definition of the practice of engineering which must be performed by a licensed engineer unless otherwise exempted, but only as long as those policies are consistent with state law, in particular Section 73-13-3; thus, the MSBRPELS may not expand the definition of "practice of engineering" by regulation. Ericksen, July 18, 2003, A.G. Op. 03-0312.

RESEARCH REFERENCES

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-5. Appointment of board.

A Board of Licensure for Professional Engineers and Surveyors is hereby created whose duty it shall be to administer the provisions of Sections 73-13-1 through 73-13-105. The board shall consist of six (6) licensed professional engineers, who shall be appointed by the Governor from eighteen (18) nominees recommended by the Mississippi Engineering Society, and shall have the qualifications required by Section 73-13-7, and three (3) licensed professional surveyors who are not licensed professional engineers, who shall be appointed by the Governor from nine (9) nominees recommended by the Mississippi Association of Professional Surveyors and who shall have the qualifications required by Section 73-13-77. The members of the board shall be appointed from the above nominees. The board so appointed shall have two (2) engineer members from each of the three (3) state Supreme Court districts, designated by district, Post 1 and Post 2, and shall serve for four (4) years, or until their successors are duly appointed and qualified.

The members recommended by the Mississippi Association of Professional Surveyors shall be appointed from each of the three (3) state Supreme Court districts and serve for four (4) years, or until their successors are duly appointed and qualified. Each member of the board shall receive a certificate of appointment from the Governor, and before beginning his term of office he shall file with the Secretary of State the constitutional oath of office. On the expiration of the term of any member, the Governor shall in the manner herein provided appoint for a term of four (4) years a licensed professional engineer having the qualifications required by Section 73-13-7, or a licensed professional surveyor having the qualifications required by Section 73-13-77 to take the place of the member of the board whose term is about to expire. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified.

The initial members of the reconstituted board shall serve terms of office as follows:

(a) The term of the engineer member presently serving at large, which term was set to expire on April 8, 2004, shall expire on July 1, 2004; and from and after July 1, 2004, this appointment shall be designated as Post 1.

(b) The term of the engineer member presently serving at large, which term was set to expire on April 8, 2004, shall expire on July 1, 2005; and from and after July 1, 2004, this appointment shall be designated as Post 2.

(c) An appointment of an engineer member serving at large shall be made on July 1, 2004, and shall expire on July 1, 2006; and from and after July 1, 2004, this appointment shall be designated as Post 3.

(d) The term of the engineer member presently serving from the First Supreme Court District, which term was set to expire on April 8, 2006, shall expire on July 1, 2007; and from and after July 1, 2004, this appointment shall be designated as Post 4.

(e) The term of the engineer member presently serving from the Second Supreme Court District, which term was set to expire on April 8, 2006, shall expire on July 1, 2008; and from and after July 1, 2004, this appointment shall be designated as Post 5.

(f) The term of the engineer member presently serving from the Third Supreme Court District, which term was set to expire on April 8, 2006, shall expire on July 1, 2009; and from and after July 1, 2004, this appointment shall be designated as Post 6.

(g) The term of the surveyor member presently serving at large, which term was set to expire on April 8, 2007, shall expire on July 1, 2004; subsequent appointments shall be made from the First Supreme Court District; from and after July 1, 2004, this appointment shall be designated as Post 7.

(h) An appointment of a surveyor member shall be made from the Second Supreme Court District; the appointment shall be made on July 1, 2004, and shall expire on July 1, 2005; from and after July 1, 2004, this appointment shall be designated as Post 8.

(i) The term of the surveyor member presently serving at large, which term was set to expire on April 8, 2006, shall expire on July 1, 2006; subsequent appointments shall be made from the Third Supreme Court District; from and after July 1, 2004, this appointment shall be designated as Post 9.

At the expiration of a term, members of the board shall be appointed in the manner prescribed in this section for terms of four (4) years from the expiration date of the previous terms. Any vacancy on the board prior to the expiration of a term for any reason, including resignation, removal, disqualification, death or disability, shall be filled by appointment of the Governor in the manner prescribed in this section for the balance of the unexpired term. The Mississippi Engineering Society and/or the Mississippi Association of Professional Surveyors shall submit a list of nominees no more than ninety (90) days after a vacancy occurs, and the Governor shall fill such vacancies within ninety (90) days after each such vacancy occurs.

It shall not be considered the duty of the State of Mississippi to provide office space and office equipment for the board herein created.

No member of the board shall, during the term of his office or thereafter, be required to defend any action for damages in any of the courts of this state where it is shown that said damage followed or resulted from any of the official acts of said board in the performance of its powers, duties or authority as set forth in this chapter. Any such action filed shall upon motion be dismissed, at the cost of the plaintiff, with prejudice.

SOURCES: Codes, 1930, § 4660; 1942, § 8791-03; Laws, 1928, Ex. Sess. ch. 56; Laws, 1940, ch. 131; Laws, 1954, ch. 321, § 3; Laws, 1962, ch. 504, § 1; reenacted and amended, Laws, 1983, ch. 450, § 3; reenacted and amended, Laws, 1991, ch. 470, § 3; reenacted without change, Laws, 1999, ch. 416, § 3; reenacted and amended, Laws, 1999, ch. 534, § 3; reenacted and amended, Laws, 2004, ch. 586, § 3, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 3 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 3 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 3 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — General powers and duties of governor, see § 7-1-5.

ATTORNEY GENERAL OPINIONS

The Mississippi Transportation Commission can pay yearly registration renewal fees and continuing education fees for selected professionals; however, membership in the Mississippi Engineering Society and the Mississippi Association of Professional Land Surveyors is not a condition of employment and the Mississippi Transportation Commission cannot pay these dues. Brown, Apr. 5, 2002, A.G. Op. #02-0142.

The Mississippi State Board of Registration for Professional Engineers and Land Surveyors (MSBRPELS), has the sole authority to adopt regulations, policies or rules identifying which tasks fall within the statutory definition of the practice of engineering which must be performed by a licensed engineer unless otherwise exempted, but only as long as those policies are consistent with state law, in particular Section 73-13-3; thus, the MSBRPELS may not expand the definition of "practice of engineering" by regulation. Erickson, July 18, 2003, A.G. Op. 03-0312.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses § 58, 59.

§ 73-13-7. Qualifications of board.

Each member of the board shall be a citizen of the United States and shall have been a resident of the state for at least five (5) years prior to the appointment. He shall be at least thirty-two (32) years of age, shall have been engaged in the practice of engineering or surveying, as the case may be, for at least ten (10) years and shall have been in responsible charge of important engineering or surveying work, as the case may be, for at least five (5) years. Each year of teaching engineering or surveying in a school or college shall be equivalent to a year of responsible charge of engineering or surveying work. Not more than two (2) members of the board at any time may be teachers of engineering in the universities or colleges of the state. All members of the board shall be licensed professional engineers or licensed professional surveyors, as the case may be.

SOURCES: Codes, 1930, § 4661; 1942, § 8791-04; Laws, 1928, Ex. Sess. ch. 56; Laws, 1940, ch. 131; Laws, 1954, ch. 321, § 4; Laws, 1962, ch. 504, § 2; reenacted and amended, Laws, 1983, ch. 450, § 4; reenacted and amended, Laws, 1991, ch. 470, § 4; reenacted without change, Laws, 1999, ch. 416, § 4; reenacted without change, Laws, 1999, ch. 534, § 4; reenacted and amended, Laws, 2004, ch. 586, § 4, eff from and after July 1, 2004.

§ 73-13-9. Compensation of the board.

Each member of the board shall receive per diem in accordance with Section 25-3-69 when actually attending to the work of the board or any of its committees, and shall be reimbursed for traveling expenses in accordance with Section 25-3-41 in carrying out the provisions of Sections 73-13-1 through 73-13-105.

SOURCES: Codes, 1930, § 4663; 1942, § 8791-05; Laws, 1928, Ex. Sess. ch. 56; Laws, 1954, ch. 321, § 5; reenacted and amended, Laws, 1983, ch. 450, § 5; reenacted and amended, Laws, 1991, ch. 470, § 5; reenacted without change, Laws, 1999, ch. 416, § 5; reenacted and amended, Laws, 1999, ch. 534, § 5; reenacted without change, Laws, 2004, ch. 586, § 5, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 5 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 5 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 5 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

§ 73-13-11. Removal of board; vacancies.

The Governor may remove any member of the board for misconduct, incompetency, neglect of duty, or for any other sufficient cause. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the Governor as provided in Section 73-13-5.

SOURCES: Codes, 1942, § 8791-06; Laws, 1954, ch. 321, § 6; reenacted without change, Laws, 1983, ch. 450, § 6; reenacted without change, Laws, 1991, ch. 470, § 6; reenacted without change, Laws, 1999, ch. 416, § 6; reenacted without change, Laws, 1999, ch. 534, § 6; reenacted without change, Laws, 2004, ch. 586, § 6, eff from and after July 1, 2004.

§ 73-13-13. Meetings of board; election of officers; quorum.

The board shall hold at least two (2) regular meetings each year, in the first and third calendar quarters. Special meetings shall be held at such time as the regulations of the board may provide. Notice of all meetings shall be given in such manner as the regulations of the board may provide. The board shall elect annually, at a regular or special meeting, the following officers: a president, a vice president, and a secretary. A quorum of the board shall consist of not less than five (5) members.

SOURCES: Codes, 1930, § 4663; 1942, § 8791-07; Laws, 1928, Ex. Sess. ch. 56; Laws, 1954, ch. 321, § 7; reenacted and amended, Laws, 1983, ch. 450, § 7; reenacted and amended, Laws, 1991, ch. 470, § 7; reenacted without change, Laws, 1999, ch. 416, § 7; reenacted without change, Laws, 1999, ch. 534, § 7; reenacted and amended, Laws, 2004, ch. 586, § 7, eff from and after July 1, 2004.

§ 73-13-15. Rules and regulations; seal; powers.

The board shall have the power to adopt and amend all regulations and rules of procedure, not inconsistent with the Constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the regulations of the proceedings before it. The board shall adopt and have an official seal. It shall not be required to post bond on appeals. The board shall have the further power and authority to:

(a) Establish standards of conduct and ethics;

(b) Institute proceedings in its own name;

(c) Promulgate rules restricting competitive bidding;

(d) Promulgate rules limiting or restricting advertising;

(e) Promulgate rules requiring a demonstration of continuing education;

(f) Adopt and promulgate reasonable bylaws and rules and regulations necessary or appropriate for the proper fulfillment of its duties under state laws pertaining thereto;

(g) Provide for the enforcement of and to enforce the laws of the State of Mississippi and, in particular, the provisions of this chapter, and the bylaws, rules and regulations of the board;

(h) Provide by appropriate rules and regulations, within the provisions of this chapter, a system for taking the disciplinary actions provided for in Section 73-13-37, including the imposition of fines as provided therein;

(i) Investigate, prosecute or initiate prosecution for violation of the laws of this state pertaining to the practices of engineering and surveying, or matters affecting the rights and duties or otherwise related thereto; and

(j) Adopt rules setting forth qualifications and standards of practice for firms.

In carrying into effect the provisions of Sections 73-13-1 through 73-13-105, the board, under the hand of its president or secretary and the seal of the board may subpoena witnesses and compel their attendance, and also may require the production of books, papers, documents, etc., in any case involving the disciplinary actions provided for in Section 73-13-37 or 73-13-89 or practicing or offering to practice without licensure. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or produce any books, papers or documents, the board may present its petition to such authority as may have jurisdiction, setting forth the facts, and thereupon such authority shall, in a proper case, issue its subpoena to such person, requiring his attendance before such authority and there to testify or to produce such books, papers, and documents, as may be deemed necessary and pertinent by the board. Any person failing or refusing to obey the subpoena or order of the said authority may be proceeded against in the same manner as for refusal to obey any other subpoena or order of the authority.

SOURCES: Codes, 1942, § 8791-08; Laws, 1954, ch. 321, § 8; reenacted and amended, Laws, 1983, ch. 450, § 8; reenacted and amended, Laws, 1991, ch. 470, § 8; reenacted without change, Laws, 1999, ch. 416, § 8; reenacted and amended, Laws, 1999, ch. 534, § 8; reenacted and amended, Laws, 2004, ch. 586, § 8, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 8 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 8 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 8 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Power of board to examine and license applicants to practice surveying, see § 73-13-75.

ATTORNEY GENERAL OPINIONS

The Mississippi Transportation Commission can pay yearly registration renewal fees and continuing education fees for selected professionals; however, membership in the Mississippi Engineering Society and the Mississippi Association of Professional Land Surveyors is not a condition of employment and the Mississippi Transportation Commission cannot pay these dues. Brown, Apr. 5, 2002, A.G. Op. #02-0142.

The Mississippi State Board of Registration for Professional Engineers and Land Surveyors (MSBRPELS) has the sole authority to adopt regulations, policies or rules identifying which tasks fall within the statutory definition of the practice of engineering which must be performed by a licensed engineer unless otherwise exempted, but only as long as those policies are consistent with state law, in particular Section 73-13-3; thus, the MSBRPELS may not expand the definition of "practice of engineering" by regulation. Erickson, July 18, 2003, A.G. Op. 03-0312.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses § 58, 59.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-17. Money received by board to be deposited in special fund; regulation of fund; audit; surety required of executive director and secretary; employees.

(1) The board shall keep an account of all monies derived from the operation of Sections 73-13-1 through 73-13-105. All fees and any other monies received by the board shall be deposited in a special fund that is created in the State Treasury and shall be used for the implementation and administration of Sections 73-13-1 through 73-13-105 when appropriated by the Legislature for such purpose. The monies in the special fund shall be subject to all provisions of the state budget laws that are applicable to special fund agencies, and disbursements from the special fund shall be made by the State Treasurer only upon warrants issued by the State Fiscal Officer upon requisitions signed by the executive director of the board and countersigned by the secretary of the board. Any interest earned on this special fund shall be credited by the State Treasurer to the fund and shall not be paid into the State General Fund. Any unexpended monies remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund. The State Auditor shall audit the financial affairs of the board and the transactions involving the special fund at least once a year in the same manner as for other special fund agencies.

(2) The executive director and the secretary of the board shall give a surety bond satisfactory to the other members of the board, conditioned upon the faithful performance of their duties. The premium on said bond shall be regarded as a proper and necessary expense of the board. When any member of the board or any employee thereof is engaged on business of the board away from the principal office of the board, he shall be entitled to receive expenses as authorized in Section 25-3-41, and members of the board shall be entitled to per diem in an amount not to exceed that authorized in Section 25-3-69, all as approved by the board.

(3) The board shall employ an executive director and may employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures for any purpose which in the opinion of the board are reasonably necessary for the proper performance of its duties under this chapter.

SOURCES: Codes, 1930, § 4664; 1942, § 8791-09; Laws, 1928, Ex. Sess. ch. 56; Laws, 1954, ch. 321, § 9; reenacted, Laws, 1983, ch. 450, § 9; reenacted and amended, Laws, 1991, ch. 470, § 9; Laws, 1992, ch. 502, § 4; reenacted without change, Laws, 1999, ch. 416, § 9; reenacted and amended, Laws, 1999, ch. 534, § 9; reenacted without change, Laws, 2004, ch. 586, § 9, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 9 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 9 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 9 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the

amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 73-13-19. Records and reports.

The board shall keep a record of its proceedings and a register of all applications for licensure, which register shall show (a) the name, age and residence of such applicant, (b) the date of the application, (c) the place of business of such applicant, (d) his educational and other qualifications, (e) whether or not an examination was required, (f) whether the applicant was rejected, (g) whether a certificate of licensure was granted, (h) the date of the action of the board, and (i) such other information as may be deemed necessary by the board.

The records of the board shall be prima facie evidence of the proceedings of the board set forth therein, and a transcript thereof, duly certified by the executive director of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

Annually, on or before March 15, the board shall submit to the Governor a report of its transactions of the preceding year, and shall file with the Secretary of State a copy of such report of the board, attested by affidavits of its president and its secretary.

SOURCES: Codes, 1930, § 4665; 1942, § 8791-10; Laws, 1928, Ex. Sess. ch. 56; Laws, 1954, ch. 321, § 10; Laws, 1968, ch. 509, § 1; reenacted without change, Laws, 1983, ch. 450, § 10; reenacted and amended, Laws, 1991, ch. 470, § 10; reenacted without change, Laws, 1999, ch. 416, § 10; reenacted without change, Laws, 1999, ch. 534, § 10; reenacted and amended, Laws, 2004, ch. 586, § 10, eff from and after July 1, 2004.

§ 73-13-21. Roster to be prepared; separate listing upon retirement.

A roster showing the names and places of business or residence of all licensed professional engineers and licensed professional surveyors and licensed firms shall be prepared biennially by the board.

SOURCES: Codes, 1930, § 4665; 1942, § 8791-11; Laws, 1928, Ex. Sess. ch. 56; Laws, 1954, ch. 321, § 11; Laws, 1968, ch. 509, § 2; reenacted and amended, Laws, 1983, ch. 450, § 11; reenacted and amended, Laws, 1991, ch. 470, § 11; reenacted without change, Laws, 1999, ch. 416, § 11; reenacted without change, Laws, 1999, ch. 534, § 11; reenacted and amended, Laws, 2004, ch. 586, § 11, eff from and after July 1, 2004.

§ 73-13-23. Qualifications for registration.

(1)(a) The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for licensure as a professional engineer:

Graduation in an engineering curriculum of four (4) years or more from a school or college approved by the board as of satisfactory standing or graduation in an engineering, engineering technology, or related science curriculum of four (4) scholastic years from a school or college other than those approved by the board plus a graduate degree in an engineering curriculum from a school or college wherein the same engineering curriculum at the undergraduate level is approved by the board as of satisfactory standing; a specific record of four (4) years of qualifying engineering experience indicating that the applicant is competent to practice engineering (in counting years of experience, the board at its discretion may give credit not in excess of three (3) years for satisfactory graduate study in engineering), and the successful passing of examinations in engineering as prescribed by the board.

(b) In considering the qualifications of applicants, engineering teaching may be construed as engineering experience.

(c) The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not be deemed to be the practice of engineering.

(d) Any person having the necessary qualifications prescribed in Sections 73-13-1 through 73-13-45 to entitle him to licensure shall be eligible for such licensure although he may not be practicing his profession at the time of making his application.

(e) No person shall be eligible for licensure as a professional engineer who is not of good character and reputation, as defined in the board's Code of Professional Conduct, or who presents claims in support of his application which contain major discrepancies.

(2) The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for enrollment as an engineer intern:

(a) Graduation in an engineering curriculum of four (4) scholastic years or more from a school or college approved by the board as of satisfactory standing or graduation in an engineering, engineering technology, or related science curriculum of four (4) scholastic years from a school or college other than those approved by the board plus a graduate degree in an engineering curriculum from a school or college wherein that same engineering curriculum at the undergraduate level is approved by the board as of satisfactory standing; and

(b) Successfully passing a written examination in the fundamental engineering subjects.

SOURCES: Codes, 1942, § 8791-12; Laws, 1954, ch. 321, § 12; Laws, 1968, ch. 509, § 3; reenacted, Laws, 1983, ch. 450, § 12; reenacted and amended, Laws,

1991, ch. 470, § 12; reenacted without change, Laws, 1999, ch. 416, § 12; reenacted and amended, Laws, 1999, ch. 534, § 12; reenacted and amended, Laws, 2004, ch. 586, § 12, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 12 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 12 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 12 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Requirement that professional engineer be registered pursuant to this section, as part of definition of "professional engineer" qualified to provide services relating to design, construction, or installation of individual on-site wastewater disposal systems, see § 41-67-4.

Examination for enrollment as engineer intern and for licensure as professional engineer, see § 73-13-27.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

CJS. 53 C.J.S., Licenses §§ 62, 63, 65, 66.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-25. Application for registration; fees.

Applications for enrollment as an engineer intern or for licensure as a professional engineer shall be on the forms prescribed and furnished by the board, shall contain statements made under oath, showing the applicant's education and detailed summary of the applicant's qualifying experience. Applications for licensure or relicensure as a professional engineer shall also contain not less than five (5) references, of whom three (3) or more shall be engineers having personal knowledge of the applicant's engineering experience.

The application fee for licensure as a professional engineer shall be determined by the board but shall not exceed Seventy-five Dollars ($75.00), which fee shall accompany the application.

The application fee for enrollment as an engineer intern shall be determined by the board but shall not exceed Twenty-five Dollars ($25.00), which fee shall accompany the application. Whenever an applicant is cited to an examination or reexamination, an additional fee equal to the actual cost of the examination shall be paid by the applicant.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 8791-13; Laws, 1954, ch. 321, § 13; Laws, 1978, ch. 500, § 1; reenacted and amended, Laws, 1983, ch. 450, § 13; reenacted and

amended, Laws, 1991, ch. 470, § 13, 1997, ch. 588, § 40; reenacted without change, Laws, 1999, ch. 416, § 13; reenacted and amended, Laws, 1999, ch. 534, § 13; reenacted and amended, Laws, 2004, ch. 586, § 13, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 13 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 13 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 13 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Issuance of certificate of registration as a professional engineer to a person holding a certificate from a national body or other state, see § 73-13-35.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

CJS. 53 C.J.S., Licenses §§ 70-72.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-27. Examination.

Examinations shall be required for enrollment as an engineer intern and for licensure as a professional engineer. The examinations shall be held at such time and place as the board may determine.

The scope of the examinations and the methods and procedure shall be prescribed by the board with special reference to the applicant's ability to design and supervise engineering works so as to insure the safety of life, health and property.

SOURCES: Codes, 1942, § 8791-14; Laws, 1954, ch. 321, § 14; Laws, 1978, ch. 500, § 2; reenacted, Laws, 1983, ch. 450, § 14; reenacted and amended, Laws, 1991, ch. 470, § 14; reenacted without change, Laws, 1999, ch. 416, § 14; reenacted without change, Laws, 1999, ch. 534, § 14; reenacted and amended, Laws, 2004, ch. 586, § 14, eff from and after July 1, 2004.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

CJS. 53 C.J.S., Licenses § 63.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-29. Certificate of registration.

The board shall issue a certificate of licensure upon payment of licensure fee as provided for in Sections 73-13-1 through 73-13-45, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of said sections. In the case of a licensed engineer, the certificate shall authorize the "practice of engineering." In the case of an engineer intern, the certificate shall state that the applicant has successfully passed the examination in fundamental engineering subjects required by the board and has been enrolled as an "engineer intern." Certificates shall show the full name, shall have a serial number, and shall be signed by the president and the secretary of the board under seal of the board.

The issuance of a certificate of licensure by this board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered professional engineer while the said certificate remains unrevoked or unexpired.

Before engaging in the practice of the profession, each licensee hereunder shall upon licensure obtain a seal of the design authorized by the board, bearing the licensee's name and the legend " licensed professional engineer." Plans, specifications and reports prepared by a licensee shall be stamped with the seal by the licensee during the life of the licensee's certificate, but it shall be unlawful for anyone to stamp or seal any documents with the seal after the certificate of the licensee named thereon is expired or revoked, or while the certificate is suspended. It shall be unlawful for anyone other than the licensee to whom the seal has been issued to stamp or seal any document utilizing such seal.

SOURCES: Codes, 1930, §§ 4666, 4668; 1942, § 8791-15; Laws, 1928, Ex. Sess. ch. 56; Laws, 1932, ch. 283; Laws, 1940, ch. 131; Laws, 1954, ch. 321, § 15; reenacted, Laws, 1983, ch. 450, § 15; reenacted and amended, Laws, 1991, ch. 470, § 15; reenacted without change, Laws, 1999, ch. 416, § 15; reenacted and amended, Laws, 1999, ch. 534, § 15; reenacted and amended, Laws, 2004, ch. 586, § 15, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 15 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 15 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 15 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Practice of engineering and engineer intern defined, see § 73-13-3.

Expiration and renewal of certificate of registration, see § 73-13-31.

Disciplinary actions, see § 73-13-37.

Unlawful acts and penalties, see § 73-13-39.

JUDICIAL DECISIONS

1. In general.

In an action by a general contractor against an architect alleging negligence in preparing a drainage plan for a construction site, the absence of the architect's professional seal on the drainage plan did not operate to relieve the architect from liability for defects in the drainage plan. Owen v. Dodd, 431 F. Supp. 1239 (N.D. Miss. 1977).

ATTORNEY GENERAL OPINIONS

The Board of Professional Engineers and Land Surveyors may recognize an applicant's Fundamentals examination taken more than ten years prior to the applicant being registered as a Professional Engineer. Brister, Aug. 15, 1997, A.G. Op. #97-0369.

§ 73-13-31. Certificate of registration; expiration.

Except as provided in Section 33-1-39, certificates of licensure shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the board to notify every person licensed under this chapter of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one (1) year. Such notice shall be sent by first-class mail to the last known address of the licensee at least one (1) month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of December by the payment of a fee, as determined by the board, not to exceed Fifty Dollars ($50.00). A person who is licensed as a professional engineer and as a professional surveyor may effect both renewals by the payment of a fee not to exceed Seventy-five Dollars ($75.00). The failure on the part of any licensee to renew his certificate annually in the month of December as required above, shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after the month of December shall be increased ten percent (10%) for each month, or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed five (5) times the normal renewal fee. A state agency or any of the state's political subdivisions, such as a county or municipality, may pay the renewal fee of any licensee who is a full-time employee; provided, however, that any licensee who permits his/her renewal fee to be paid from any public funds shall not perform engineering or surveying services for a fee or other emoluments for the public or for any other public entity. If a certificate has expired for six (6) months or more, the licensee shall be required to submit a new application, paying back fees and submitting proof of continuing professional competency compliance. If the certificate has expired for five (5) years or more, in addition to submitting a new application and proof of continuing professional competency compliance, reexamination in the principles and practice may be required. The reexamination requirement may be waived by the board provided the applicant has continued to practice in another jurisdiction from the date of expiration of his certificate.

SOURCES: Codes, 1942, § 8791-16; Laws, 1954, ch. 321, § 16; Laws, 1971, ch. 506, § 1; Laws, 1978, ch. 500, § 3; reenacted and amended, Laws, 1983, ch. 450, § 16; reenacted and amended, Laws, 1991, ch. 470, § 16; reenacted without change, Laws, 1999, ch. 416, § 16; reenacted and amended, Laws, 1999, ch. 534, § 16; reenacted and amended, Laws, 2004, ch. 586, § 16; Laws, 2007, ch. 309, § 12, eff from and after passage (approved Mar. 8, 2007.)

Joint Legislative Committee Note — Section 16 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 16 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 16 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 80, 82 et seq.

§ 73-13-33. Rights and privileges.

All professional engineers, licensed in accordance with the provisions of Chapter 56 of the Laws of Mississippi of 1928, Extraordinary Session, and as amended under Senate Bill No. 383, Chapter 131, Laws of 1940, and whose certificates of licensure are in effect at the time of passage of Sections 73-13-1 through 73-13-45, shall be entitled to all the rights and privileges of a licensed professional engineer as provided for in those sections, while the said certificate remains unrevoked or unexpired.

SOURCES: Codes, 1942, § 8791-17; Laws, 1954, ch. 321, § 17; reenacted, Laws, 1983, ch. 450, § 17; reenacted without change, Laws, 1991, ch. 470, § 17; reenacted without change, Laws, 1999, ch. 416, § 17; reenacted without change, Laws, 1999, ch. 534, § 17; reenacted and amended, Laws, 2004, ch. 586, § 17, eff from and after July 1, 2004.

§ 73-13-35. Persons holding certificate from a national body or other state.

The board may, upon application therefor and the payment of a fee in accordance with Section 73-13-25, issue a certificate of licensure as a professional engineer to any person who holds a certificate of qualification or licensure issued to him by proper authority of any state or territory or possession of the United States, or of any country, provided that the applicant's qualifications meet the requirements of Sections 73-13-1 through 73-13-45 and the rules established by the board. The issuance of a certificate of licensure by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Codes, 1942, § 8791-19; Laws, 1954, ch. 321, § 19; Laws, 1968, ch. 509, § 4; Laws, 1978, ch. 500, § 4; reenacted and amended, Laws, 1983, ch. 450, § 18; reenacted and amended, Laws, 1991, ch. 470, § 18; reenacted without change, Laws, 1999, ch. 416, § 18; reenacted without change, Laws, 1999, ch. 534, § 18; reenacted and amended, Laws, 2004, ch. 586, § 18; Laws, 2013, ch. 350, § 14, eff from and after July 1, 2013.

Comparable Laws from other States — Alabama: Code of Ala. § 34-11-4.
Arkansas: A.C.A. § 17-30-302.
Florida: Fla. Stat. § 471.015.
Georgia: O.C.G.A. § 43-15-16.
Louisiana: La. R.S. § 37:693.
North Carolina: N.C. Gen. Stat. § 89C-13.
South Carolina: S.C. Code Ann. § 40-22-230.
Tennessee: Tenn. Code Ann. § 62-2-304.
Texas: Tex. Occ. Code § 1001.311.
West Virginia: W. Va. Code § 30-13-13.

§ 73-13-37. Disciplinary actions; hearing; subpoenas; statement of charges; transcripts; witnesses; right to counsel; penalties; probation; reissuance of certificate of registration; appeals.

(1) The board, upon satisfactory proof and in accordance with the provisions of this chapter and the implementing regulations of the board pertaining thereto, is authorized to take the disciplinary actions provided for hereinafter against any person or firm practicing engineering or surveying, including nonregistrants, for any of the following reasons:

(a) Violating any of the provisions of Sections 73-13-1 through 73-13-45 or the implementing bylaws, rules, regulations, or standards of ethics or conduct duly adopted and promulgated by the board pertaining to the practice of engineering;

(b) Fraud, deceit or misrepresentation in obtaining a certificate of licensure;

(c) Gross negligence, malpractice or incompetency;

(d) Any professional misconduct, as defined by the board through bylaws, rules and regulations, and standards of conduct and ethics;

(e) Practicing or offering to practice engineering on an expired certificate or while under suspension or revocation of certificate unless said suspension or revocation be abated through probation, as provided for hereinafter; or

(f) Addiction to or dependence on alcohol or other habit-forming drugs or being an habitual user of alcohol, narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effect.

(2) Any person may prefer charges against any other person practicing engineering or surveying, including nonlicensees, for committing any of the acts set forth in subsection (1). Such charges shall be sworn to, either upon actual knowledge or upon information and belief, and shall be filed with the board. In the event any person certified under Sections 73-13-1 through

73-13-45 is expelled from membership in any Mississippi professional engineering society or association, the board shall thereafter cite said person to appear at a hearing before the board and to show cause why disciplinary action should not be taken against him.

The board shall investigate all charges filed with it and, upon finding reasonable cause to believe that the charges are not frivolous, unfounded or filed in bad faith, may, in its discretion, cause a hearing to be held, at a time and place fixed by the board, regarding the charges and may compel the accused by subpoena to appear before the board to respond to said charges.

No disciplinary action taken hereunder may be taken until the accused has been furnished both a statement of the charges against him and notice of the time and place of the hearing thereof, which shall be personally served on or mailed by registered or certified mail, return receipt requested, to the last-known business or residence address of the accused not less than thirty (30) days prior to the date fixed for the hearing.

Notice on a firm shall be had by notice on the principal or officer designated by the firm as having management or supervision of the engineering/surveying practice, or on the registered agent in the case of a corporation not domiciled in Mississippi.

(3) At any hearing held hereunder, the board shall have the power to subpoena witnesses and compel their attendance and may also require the production of books, papers, documents, etc., as provided elsewhere in this chapter. The board is authorized to designate or secure a hearing officer to conduct the hearing. All evidence shall be presented under oath, which may be administered by any member of the board, and thereafter the proceedings may, if necessary, be transcribed in full by the court reporter and filed as part of the record in the case. Copies of such transcriptions may be provided to any party to the proceedings at a cost to be fixed by the board.

All witnesses who shall be subpoenaed and who shall appear in any proceedings before the board shall receive the same fees and mileage as allowed by law in judicial civil proceedings, and all such fees shall be taxed as part of the costs in the case.

Where in any proceeding before the board any witness shall fail or refuse to attend upon subpoena issued by the board, shall refuse to testify or shall refuse to produce any books and papers, the production of which is called for by the subpoena, the attendance of such witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

The accused shall have the right to be present at the hearing in person, by counsel or other representative, or both. The board is authorized to continue or recess the hearing as may be necessary.

(4) At the conclusion of the hearing, the board may either decide the issue at that time or take the case under advisement for further deliberation. The board shall render its decision not more than ninety (90) days after the close of

the hearing, and shall forward to the last-known business or residence address of the accused, by certified or registered mail, return receipt requested, a written statement of the decision of the board.

If a majority of the board finds the accused guilty of the charges filed, the board may: (a) issue a public or private reprimand; (b) require the guilty party to complete a course or courses, approved by the board, in ethics or other appropriate subjects; (c) suspend or revoke the certificate of the accused, if the accused is a licensee; and/or (d) in lieu of or in addition to such reprimand, course completion, suspension or revocation, assess and levy upon the guilty party a monetary penalty of not less than One Hundred Dollars ($100.00) nor more than Five Thousand Dollars ($5,000.00) for each violation.

(5) A monetary penalty assessed and levied under this section shall be paid to the board upon the expiration of the period allowed for appeal of such penalties under this section, or may be paid sooner if the guilty party elects. Money collected by the board under this section shall be deposited to the credit of the board's special fund in the State Treasury.

When payment of a monetary penalty assessed and levied by the board in accordance with this section is not paid when due, the board shall have the power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county and judicial district of residence of the guilty party and if the guilty party be a nonresident of the State of Mississippi, such proceedings shall be in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(6) When the board has taken a disciplinary action under this section, the board may, in its discretion, stay such action and place the guilty party on probation for a period not to exceed one (1) year upon the condition that the guilty party shall not further violate either the laws of the State of Mississippi pertaining to the practice of engineering or the bylaws, rules and regulations, or standards of conduct and ethics promulgated by the board.

(7) The board, in its discretion, may assess and tax any part or all of the costs of any disciplinary proceedings conducted under this section against either the accused, the charging party, or both, as it may elect.

(8) The power and authority of the board to assess and levy the monetary penalties provided for in this section shall not be affected or diminished by any other proceeding, civil or criminal, concerning the same violation or violations except as provided in this section.

(9) The board, for sufficient cause, may reissue a revoked certificate of licensure or authority whenever a majority of the board members vote to do so.

(10) Any person or firm aggrieved by an action of the board denying or revoking his certificate of licensure or authority or relicensure as a professional engineer or his certificate of enrollment as an engineer intern, or who is aggrieved by the action of the board as a result of disciplinary proceedings conducted under this section may appeal therefrom to the chancery court of either the county wherein the appellant resides or the Chancery Court of the First Judicial District of Hinds County, at the election of the appellant. If the appellant is a nonresident of this state, the appeal shall be made to the

Chancery Court of the First Judicial District of Hinds County. Such appeal shall be perfected before the board by the filing with the board of a notice of appeal to the chancery court. The court shall require a bond in an amount not to exceed One Thousand Dollars ($1,000.00) conditioned to pay all costs which may be adjudged against the appellant. The notice of appeal shall be filed not later than thirty (30) days after the decision of the board is forwarded to the guilty party, as provided hereinabove.

All appeals perfected hereunder shall not act as a supersedeas, and shall be made to the chancery court solely upon the record made before the board during the disciplinary hearing. When the appeal shall have been properly perfected as provided herein, the board shall cause the record of the proceedings conducted before it to be compiled, certified and filed with the chancery court. The briefing schedule shall be the same as for appeals to the Supreme Court. The chancery court shall be required to rule on the case within sixty (60) days of the close of briefing. All procedures and penalties provided for in this section shall apply to nonlicensees as well as licensees.

(11) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the certificate of licensure of any person for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a certificate for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a certificate suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a certificate suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a certificate when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a suspension of a certificate that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

(12) Any board member whose objectivity in a disciplinary proceeding is impaired shall either recuse himself from sitting as a member of the board in a formal disciplinary hearing in that proceeding or be disqualified therefrom. In the event a disciplinary proceeding is brought against a member or former member of the board, no member of the board who has served concurrently with the respondent in the disciplinary proceeding shall sit as a member of the board in a formal disciplinary hearing in that proceeding. If, after recusal or disqualification of board members as provided herein, there does not remain a quorum of the board to sit for a disciplinary hearing, the board shall have the power to select, in accordance with duly promulgated regulations of the board, substitute panel members from slates of candidates established by the Mississippi Engineering Society and the Mississippi Association of Professional Surveyors to the extent necessary to achieve the number of panel members

equivalent to a quorum of the board. Substitute panel members must meet the qualifications of board members as provided in Section 73-13-7 and shall receive compensation as provided for board members in Section 73-13-9.

SOURCES: Codes, 1930, § 4667; 1942, § 8791-20; Laws, 1928, Ex. Sess. ch. 56; Laws, 1954, ch. 321, § 20; Laws, 1968, ch. 509, § 5; Laws, 1971, ch. 506, § 2; reenacted and amended, Laws, 1983, ch. 450, § 19; reenacted and amended, Laws, 1991, ch. 470, § 19; Laws, 1992, ch. 502, § 10; Laws, 1996, ch. 507, § 38; reenacted without change, Laws, 1999, ch. 416, § 19; reenacted and amended, Laws, 1999, ch. 534, § 19; reenacted and amended, Laws, 2004, ch. 586, § 19, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 19 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 19 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 19 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Power of board concerning disciplinary actions, see § 73-13-15.

Unlawful acts and penalties, see § 73-13-39.

The applicability of this section to disciplinary actions for violation of laws concerning land surveyors, see § 73-13-89.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

ALR. Revocation or suspension of license of professional engineer. 64 A.L.R.3d 509.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 37 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

CJS. 53 C.J.S., Licenses §§ 82 et seq.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-39. Unlawful acts and penalties.

Any person or firm who shall practice, or offer to practice, engineering in this state without being licensed in accordance with the provisions of Sections 73-13-1 through 73-13-45, or any person presenting or attempting to use as his own the certificate of licensure or seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of licensure, or any person who shall falsely impersonate any other licensee of like or different name, or any person or firm who shall attempt to use an expired or revoked certificate of licensure, or any person or firm who shall violate any of the provisions of Sections 73-13-1 through 73-13-45, shall be guilty of a misdemeanor, and shall, upon conviction, be sentenced to pay a fine of not less than One Hundred Dollars ($100.00), nor more than Five Thousand Dollars ($5,000.00) in addition to reimbursement of investigative expenses and court costs, or suffer imprisonment for a period not exceeding three (3) months, or both. The criminal penalties provided for in this section may be assessed in addition to those civil penalties provided for in Section 73-13-37.

Unless licensed in accordance with the provisions of Sections 73-13-1 through 73-13-45, no person shall:

(a) Directly or indirectly employ, use, cause to be used or make use of any of the following terms or any combinations, variations or abbreviations thereof as a professional, business or commercial identification, title, name, representation, claim, asset or means of advantage or benefit: "engineer," "professional engineer," "licensed engineer," "registered engineer," "registered professional engineer," "licensed professional engineer," "engineered," "engineering"; or

(b) Directly or indirectly employ, use, cause to be used or make use of any letter, abbreviation, word, symbol, slogan, sign or any combinations or variations thereof which in any manner whatsoever tends or is likely to create any impression with the public or any member thereof that any person is qualified or authorized to practice engineering; or

(c) Receive any fee or compensation or the promise of any fee or compensation for performing, offering or attempting to perform any service, work, act or thing which is any part of the practice of engineering.

Any person, firm, partnership, association or corporation which shall do, offer or attempt to do any one or more of the acts or things set forth in items (a) through (c) of the preceding paragraph shall be conclusively presumed and regarded as engaged in the practice of engineering.

It shall be the duty of all duly constituted officers of the law of this state, or any political subdivision thereof, to enforce the provisions of Sections 73-13-1 through 73-13-45 and to prosecute any persons violating same. Except as otherwise authorized in Section 7-5-39, the Attorney General of the state or his assistant shall act as legal advisor of the board in carrying out the provisions of Sections 73-13-1 through 73-13-45.

SOURCES: Codes, 1930, § 4669; 1942, § 8791-21; Laws, 1928, Ex. Sess. ch. 56; Laws, 1940, ch. 131; Laws, 1954, ch. 321, § 21; reenacted and amended, Laws, 1983, ch. 450, § 20; reenacted without change, Laws, 1991, ch. 470, § 20; reenacted without change, Laws, 1999, ch. 416, § 20; reenacted and amended, Laws, 1999, ch. 534, § 20; reenacted and amended, Laws, 2004, ch. 586, § 20; Laws, 2012, ch. 546, § 33, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 20 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 20 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 20 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the

amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Injunctions to restrain unlawful practice of profession, see § 73-51-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

This section [Codes 1942, § 8791-21] operates to exempt a registered engineer from also registering as an architect where the work of the two professions overlaps. State Bd. of Registration for Professional Eng'rs v. Rogers, 239 Miss. 35, 120 So. 2d 772 (1960), error overruled, 239 Miss. 44, 121 So. 2d 720 (1960).

ATTORNEY GENERAL OPINIONS

Industrial employees whose performance of engineering services is exempt from the registration law may not use the title "engineer"; however, this does not prohibit an employer from denominating an employee within his organization as an engineer, as long as neither the employer nor the employee hold out to the general public that the employee is an engineer. Brister, Feb. 8, 2002, A.G. Op. #01-0604.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 43.

CJS. 53 C.J.S., Licenses §§ 125-132.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-41. Applicability.

(1) Sections 73-13-1 through 73-13-45 shall not be construed to prevent or to affect:

(a) The practice of any other legally recognized profession or trade, such as: (i) engineers employed by contractors to supervise work on which a licensed engineer is engaged; (ii) architects who are registered under the provisions of Chapter 1 of this title; and (iii) the practice of geology as regulated pursuant to Title 73, Chapter 63;

(b) The work of an employee or a subordinate of a person holding a certificate of licensure under Sections 73-13-1 through 73-13-45, provided such work does not include final designs or decisions and is done under the responsibility, checking and supervision of a person holding a certificate of licensure under Sections 73-13-1 through 73-13-45;

(c) The practice of officers and employees of the government of the United States while engaged within this state in the practice of engineering for said government;

(d) The performance of engineering services by any regular full-time employee of a manufacturing, research and development, railroad or other industrial corporation, provided:

(i) Such services are rendered on or in connection with existing fixed works, equipment, systems, processes or facilities owned, operated, or leased by such corporation and/or its affiliates;

(ii) Such services are not rendered to third parties;

(iii) Such services do not consist of original plant design, original system design, or original process design, other than routine system extensions that do not compromise the integrity of the original design;

(iv) Such services comply with all requirements specified by the employee's company or corporation;

(v) All fixed works, equipment, systems, processes or facilities modified by such services undergo a safety review that confirms: 1. the construction and equipment is in accordance with design specifications; and 2. safety, operating, maintenance and emergency procedures are in place to safeguard life, health and property;

(vi) Such services are not required to be performed, approved or certified by a professional engineer pursuant to law or regulation, whether federal, state or local, other than Sections 73-13-1 through 73-13-45 hereof or any applicable rules or regulations promulgated by the Mississippi Board of Licensure for Professional Engineers and Surveyors;

It is further stated that this subsection (d) is intended to codify the policy and practices of the board on July 1, 1999, and that any ambiguities in this subsection should be construed in accordance with this intent;

(e) The performance of engineering services with respect to utility facilities by any public utility subject to regulation by the Mississippi Public Service Commission, the Federal Communications Commission, the Federal Energy Regulatory Commission, or the Nuclear Regulatory Commission, including its parents, affiliates, subsidiaries; or by the officers and regular full-time employees of any such public utility, including its parents, affiliates or subsidiaries, provided that they are engaged solely and exclusively in performing service for such public utility and/or its parents, affiliates or subsidiaries, and as long as such services comply with all standard operating procedures and requirements specified by the employee's company or corporation. This exemption shall not extend to: (i) the practice of engineering performed by public utilities or their officers or employees when such services are rendered to nonaffiliated third parties in exchange for compensation other than that received from their employer, or the use of any name, title or words which tend to convey the impression that a nonregistrant is offering engineering services to the public; and (ii) services which are required to be performed, approved or certified by a professional engineer pursuant to law or regulation whether federal, state or local, other than Sections 73-13-1 through 73-13-45 hereof or any applicable rules or regulations promulgated by the Mississippi Board of Licensure for Professional Engineers and Surveyors;

It is further stated that this subsection (e) is intended to codify the policy and practices of the board on July 1, 1999, and that any ambiguities in this subsection should be construed in accordance with this intent;

(f) The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery, equipment, water plants, power generation, utility transmission, utility distribution facilities, sewage plants and solid waste disposal facilities; or

(g) Activities conducted during the course of, or in anticipation of, litigation including, but not exclusively: analyzing, evaluating, consulting, reconstructing, testing, responding to the opinions and testing conducted by others, and offering expert testimony. However, this exemption shall not apply in legal proceedings where the subject matter of the litigation or claim is nonforensic engineering activity legally required to be performed under a Mississippi engineer's license.

(2) In addition to the exemptions provided in subsection (1), there is hereby granted and reserved to the board the authority to exempt from Sections 73-13-1 through 73-13-45 by regulation specific engineering tasks or functions performed by regular full-time employees of manufacturing, public utility, research and development, railroad or other industrial corporations rendered in the course and scope of their employment, on a case by case basis, if, in the opinion of the board, the public health and welfare is not endangered nor the engineering profession diminished.

SOURCES: Codes, 1930, § 4670; 1942, § 8791-22; Laws, 1928, Ex. Sess. ch. 56; Laws, 1954, ch. 321, § 22; reenacted, Laws, 1983, ch. 450, § 21; reenacted and amended, Laws, 1991, ch. 470, § 21; reenacted without change, Laws, 1999, ch. 416, § 21; reenacted and amended, Laws, 1999, ch. 534, § 21; reenacted and amended, Laws, 2004, ch. 586, § 21; Laws, 2012, ch. 425, § 1, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 21 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 21 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 21 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (1)(b). The words "this act" were changed to "Sections 73-13-1 through 73-13-45." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Cross References — Licensing of architects, see §§ 73-1-1 et seq.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 29 et seq.

CJS. 53 C.J.S., Licenses §§ 56, 57.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-43. Corporations or partnerships.

As of January 1, 2005, no corporation, firm or partnership may engage in the practice of professional engineering in this state unless it has been issued a certificate of authority by the board. In order to qualify for a certificate of authority, a corporation, firm or partnership must have at least one (1) Mississippi-licensed professional engineer as a principal officer, partner or designated principal engineer of the firm who has management responsibility for such practice and who makes significant technical and/or contractual judgments on behalf of the firm which would affect the firm's professional reputation and liability.

The board shall have the authority to promulgate rules and regulations setting procedures, standards and other requirements for issuing and maintaining a certificate of authority for corporations, firms or partnerships practicing engineering in the State of Mississippi.

Applications for a certificate of authority shall be on the forms prescribed and furnished by the board, and provide all the information required by said board. The board shall establish a fee for the certificate of authority application, not to exceed Two Hundred Fifty Dollars ($250.00). Any corporation, firm or partnership having the necessary qualifications as prescribed herein and the rules and regulations of the board shall be issued a certificate of authority for said corporation, firm or partnership to practice engineering and to contract and collect fees for furnishing this service.

Each certificate of authorization will expire on December 31 of each year. It shall be the duty of the board to notify every corporation, firm or partnership holding a certificate of authority under Sections 73-13-1 through 73-13-45 of the date of the expiration of the certificate and the amount of the fee that shall be required for its renewal for one (1) year. The renewal fee shall not exceed One Hundred Fifty Dollars ($150.00); penalties for late renewal shall be ten percent (10%) per month that payment is delayed. Additionally, if any of the information on the initial or any subsequent renewal application changes for the corporation, firm or partnership, said corporation, firm or partnership shall notify the board in the form and manner prescribed by the board within thirty (30) days of the change.

Effective January 1, 2005, the Secretary of State shall not issue a certificate of incorporation, licensure or authorization to an applicant or licensure as a foreign firm to a corporation, firm or partnership which includes in its name, or among the objectives for which it is established, any of the words, "engineer," "engineering," or any modification or derivation thereof, unless the board has issued for said applicant a certificate of authority or a letter indicating the eligibility of such applicant to receive such a certificate. The corporation, firm or partnership applying shall supply such certificate or letter from the board with its application for incorporation, licensure or authorization to the Secretary of State.

An engineer who renders occasional, part-time or consulting engineering services to or for a corporation, firm or partnership may not, for the purposes of this section, be designated as being responsible for the professional activities of the firm.

No such corporation, firm or partnership shall be relieved of responsibility for the conduct or acts of its agents, employees, officers, partners, members or managers by reason of its compliance with the provisions of this section. No individual practicing engineering under this chapter shall be relieved of responsibility for engineering services performed by reason of employment or other relationship with a firm holding an authorization certificate.

SOURCES: Codes, 1930, § 4671; 1942, § 8791-24; Laws, 1928, Ex. Sess. ch. 56; Laws, 1954, ch. 321, § 24; reenacted and amended, Laws, 1983, ch. 450, § 22; reenacted without change, Laws, 1991, ch. 470, § 22; reenacted without change, Laws, 1999, ch. 416, § 22; reenacted and amended, Laws, 1999, ch. 534, § 22; reenacted and amended, Laws, 2004, ch. 586, § 22, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 22 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 22 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 22 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Practice of copartnership of architects and engineers, see § 73-1-19.

Sole proprietorship, owned and operated by licensee under this chapter, or professional association of licensed professional engineers or professional surveyors not required to obtain certificate of authority under this section, see § 73-13-3.

§ 73-13-45. Public works.

(1)(a) Neither the state, nor any of its political subdivisions, such as a county, city or town, shall award construction contracts of any public work involving the practice of engineering or architecture unless the plans, specifications and estimates have been prepared and such work supervised by a registered professional engineer or architect; however, nothing in this subsection shall be held to apply to such public work in which the expenditure does not exceed One Hundred Thousand Dollars ($100,000.00).

(b) The state and any of its political subdivisions, such as a county, city or town, may engage in construction of public buildings involving the practice of engineering or architecture and using political subdivision workforces without the supervision of a licensed professional engineer or architect, provided that the total cost of the public building does not exceed One Hundred Fifty Thousand Dollars ($150,000.00). This paragraph (1) (b) shall not supersede any rules and regulations promulgated by the State Department of Health and the Department of Environmental Quality.

(2)(a) In the awarding of public contracts for professional engineering services, preference shall be given to resident professional engineers over those nonresident professional engineers domiciled in a state having laws which grant a preference to the professional engineers who are residents of that state. Nonresident professional engineers shall be awarded Mississippi public contracts only on the same basis as the nonresident professional's state awards contracts to Mississippi professional engineers under similar circumstances. When a nonresident professional engineer submits a proposal for a public project, he shall attach thereto a copy of his resident state's current statute, resolution, policy, procedure or executive order pertaining to such state's treatment of nonresident professional engineers. Resident professional engineers actually domiciled in Mississippi, be they corporate, individuals or partnerships, shall be granted preference over nonresidents in the awarding of contracts in the same manner and to the same extent as provided by the laws of the state of domicile of the nonresident. As used in this section, the term "resident professional engineer" includes a nonresident person, firm or corporation that has been qualified to do business in this state and has maintained a permanent full-time office in the State of Mississippi for not less than two (2) years prior to submitting a proposal for a public project, and the subsidiaries and affiliates of such a person, firm or corporation.

(b) The provisions of this subsection shall not apply to any contract for any project upon which federal funds would be withheld because of the preference requirements of this subsection.

(c) Any contract, agreement or arrangement for professional engineering services negotiated, made or entered into, directly or indirectly, by the state, counties, municipalities or any political subdivision thereof, or by any special districts, which is in any way in violation of the provisions of this subsection is hereby declared to be void as contrary to the public policy of this state and shall not be given effect or enforced by any court of this state or by any of its officers or employees.

(d) Nothing in this subsection shall affect the validity of any contract in existence prior to July 1, 1989.

(e) For purposes of this section, the term "professional engineering services" means those within the scope of the practice of professional engineering as defined by Sections 73-13-1 through 73-13-45, or those performed by any registered professional engineer in connection with professional employment or practice.

SOURCES: Codes, 1930, § 4672; 1942, § 8791-18; Laws, 1928, Ex. Sess. ch. 56; Laws, 1940, ch. 279; Laws, 1954, ch. 321, § 18; reenacted, Laws, 1983, ch. 450, § 23; Laws, 1989, ch. 325, § 1; reenacted and amended, Laws, 1991, ch. 470, § 23; Laws, 1995, ch. 597, § 1; Laws, 1997, ch. 446, § 1; reenacted without change, Laws, 1999, ch. 416, § 23; reenacted without change, Laws, 1999, ch. 534, § 23; reenacted and amended, Laws, 2004, ch. 586, § 23; Laws, 2008, ch. 410, § 1; Laws, 2015, ch. 338, § 1, eff from and after July 1, 2015.

Cross References — Employment of county engineer and assistant engineers, see § 65-17-201.

Licensing of architects, see §§ 73-1-1 et seq.

ATTORNEY GENERAL OPINIONS

To the extent a project that an inland port authority proposes is within the provisions of subsection (1), the work must be supervised by a registered professional engineer or architect. Michael, March 10, 2000, A.G. Op. #2000-0110.

A school district would be required to retain the services of an engineer or architect to prepare the plans, specifications and estimates, and to supervise the construction on any project requiring an expenditure in excess of $ 50,000.00; if the school board intends to use its own employees in the construction, Section 73-13-45(1)(b) places the cap on expenditures at $ 100,000.00 before engineering or architectural services are necessary. Elliot, Jan. 10, 2003, A.G. Op. #02-0768.

The requirement of Section 31-3-1 that a contractor have a valid certificate of responsibility is separate and distinct from the requirement imposed by Section 73-13-45 mandating engineering or architectural services on public construction projects. Elliot, Jan. 10, 2003, A.G. Op. #02-0768.

Section 73-1-39 and this section should be read and applied together. Section 73-1-39 encompasses exceptions to licensure that involve public building size, while § 73-13-45 encompasses exceptions to licensure that involve public work cost, which work reasonably includes construction of public buildings owned by the state. Adams. Jan. 21, 2004, A.G. Op. 03-0637.

A local, non-licensed firm may be used as a project manager by the licensed architecture firm required by subsection (1) of this section, provided the licensed architecture firm has the ultimate supervision on construction plans and work issues for a new high school project. Adams, Mar. 12. 2004, A.G. Op. 04-0088.

Even if the $100,000 exemption was in respect to the total renovation costs as opposed to the total cost of the building, this section contains no language which suggests a pro rata scheme in which the requirement to utilize a registered professional engineer or architect would be obviated if some or most of the work was performed by the school district workforce and the remaining work, such as electrical work, was contracted out. Adams, Mar. 19, 2004, A.G. Op. 04-0112.

RESEARCH REFERENCES

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

LAND SURVEYORS

SEC.
73-13-71. Definitions.
73-13-73. Persons practicing land surveying required to register.
73-13-75. Granting further powers to state board of registration for professional engineers and land surveyors.
73-13-77. Qualifications of applicant as land surveyor or land surveyor-in-training.
73-13-79. Application and registration fees.
73-13-81. Examinations.
73-13-83. Certificates; seals.
73-13-85. Expiration and renewals.
73-13-87. Acceptance of certificates from other states, territories, and countries.
73-13-89. Disciplinary actions.
73-13-91. Repealed.

73-13-93.	Appeals.
73-13-95.	Violations and penalties.
73-13-97.	Application of Sections 73-13-71 through 73-13-105.
73-13-99.	Repealed
73-13-101.	Repealed.
73-13-103.	Immunity of land surveyors from criminal liability for trespass.
73-13-105.	Professional land surveying firm; requirement that firm have at least one registered professional land surveyor as principal officer or partner.

§ 73-13-71. Definitions.

(1) The term "board," as used in Sections 73-13-71 through 73-13-105, shall mean the Board of Licensure for Professional Engineers and Surveyors as provided for in Section 73-13-5 of this chapter.

(2) The term "professional surveyor," as used in Sections 73-13-71 through 73-13-105, shall mean a person who engages in the practice of surveying as hereinafter defined, whether in an individual capacity, or in behalf of or as an employee of any state, county or municipal authority of the State of Mississippi.

(3) The term "surveyor intern," as used in Sections 73-13-71 through 73-13-105, shall mean a candidate for licensure as a professional surveyor who has successfully passed the fundamentals of land surveying examination, has met the requirements of the board for enrollment, has received from the board a certificate stating that he has successfully passed this portion of the professional land surveying examinations and has been enrolled as a surveyor intern.

(4) The practice of " surveying," within the meaning and intent of Sections 73-13-71 through 73-13-105, shall mean providing professional services such as consultation, investigation, testimony evaluation, expert technical testimony, planning, mapping, assembling and interpreting reliable scientific measurement and information relative to the location, size, shape or physical features of the earth, improvements on the earth, the space above the earth, or any part of the earth, utilization and development of these facts and interpretation into an orderly survey map, plan or report and in particular, the retracement of or the creating of land boundaries and descriptions of real property.

The practice of surveying includes, but is not limited to, any one or more of the following:

(a) Locating, relocating, establishing, reestablishing, laying out or retracing any property boundary or easement.

(b) Making any survey for the subdivision of any tract of land, including rights-of-way and easements.

(c) Determining, by the use of principles of surveying, the position for any survey monument or reference point; or setting, resetting or replacing any such monument or reference point, commonly known as control surveys.

(d) Creating, preparing or modifying electronic or computerized data, including land information systems and geographic information systems, relative to the performance of the activities in the above-described paragraphs (a) through (c).

SOURCES: Codes, 1942, § 8792-01; Laws, 1962, ch. 505, § 1; reenacted, Laws, 1983, ch. 450, § 24; reenacted and amended, Laws, 1991, ch. 470, § 24; reenacted without change, Laws, 1999, ch. 416, § 24; reenacted and amended, Laws, 1999, ch. 534, § 24; reenacted and amended, Laws, 2004, ch. 586, § 24, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 24 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 24 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 24 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

ATTORNEY GENERAL OPINIONS

Whether activities of "coordination services" (companies that contract for surveying services with their clients and then hire licensed Mississippi professional surveyors to perform the surveying work) constitute the unlawful practice of surveying involves factual questions. Brister, May 19, 2006, A.G. Op. 06-0163.

RESEARCH REFERENCES

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-73. Persons practicing land surveying required to register.

No person shall practice surveying without having first been duly and regularly licensed by the Board of Licensure for Professional Engineers and Surveyors as a professional surveyor as required by Sections 73-13-71 through 73-13-105, nor shall any person practice surveying whose authority to practice is revoked by the said board.

The practice of surveying, which must be performed by or under the direct supervision of a professional surveyor and each map or drawing of which must be stamped with the seal of said licensee as provided in Section 73-13-83, includes, but is not limited to, the following: property and boundary surveys; subdivision surveys and plats; public land surveys; easement surveys; right-of-way surveys; lease surveys; and all other surveys that require the establishment or reestablishment of property boundaries.

Duties within both the practice of surveying and the practice of engineering, which must be performed by or under the direct supervision of a professional surveyor or a professional engineer and each map, drawing or report of which must be stamped with the seal of said licensee as provided in Sections 73-13-29 and 73-13-83, include, but are not limited to, the following:

(a) Determining the configuration or contour of the earth's surface or the position of fixed objects thereon, commonly known as topographical surveys and as-built surveys (excluding the location of property boundaries);

(b) Performing geodetic surveying which includes surveying for determination of the size and shape of the earth utilizing angular and linear measurements through spatially oriented spherical geometry;

(c) Determining, by the use of principles of surveying, the position for any survey control (nonboundary) monument or reference point; or setting, resetting or placing any such monument or reference point; and

(d) Creating, preparing or modifying electronic or computerized data, including land information systems, and geographic information systems, relative to the performance of the activities in the above-described paragraphs (a) through (c).

SOURCES: Codes, 1942, § 8792-02; Laws, 1962, ch. 505, § 2; Laws, 1980, ch. 515, § 1; reenacted and amended, Laws, 1983, ch. 450, § 25; reenacted and amended, Laws, 1991, ch. 470, § 25; reenacted without change, Laws, 1999, ch. 416, § 25; reenacted and amended, Laws, 1999, ch. 534, § 25; reenacted and amended, Laws, 2004, ch. 586, § 25, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 25 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 25 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 25 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Disciplinary actions, see § 73-13-89.

Appeals, see § 73-13-93.

Violations and penalties, see § 73-13-95.

ATTORNEY GENERAL OPINIONS

Landscape architects have authority to prepare project site plans, land subdivision plans and to affix their appropriate seal on those documents; but lack authority to conduct surveys of real property; plans and specifications prepared by landscape architects should recite disclaimer that intent of said plans and specifications is not to purport accurate survey. Kilpatrick, Oct. 24, 1990, A.G. Op. #90-0778.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 29 et seq.

CJS. 53 C.J.S., Licenses §§ 58, 59 et seq.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-75. Granting further powers to state board of registration for professional engineers and land surveyors.

The Mississippi Board of Licensure for Professional Engineers and Surveyors is hereby authorized and empowered to examine applicants for registration to practice surveying; to license and issue certificates of licensure to all applicants whom it deems qualified to practice surveying in accordance with Sections 73-13-71 through 73-13-105; and to revoke certificates of licensure for just cause as provided for in Sections 73-13-71 through 73-13-105.

SOURCES: Codes, 1942, § 8792-03; Laws, 1962, ch. 505, § 3; reenacted, Laws, 1983, ch. 450, § 26; reenacted without change, Laws, 1991, ch. 470, § 26; reenacted without change, Laws, 1999, ch. 416, § 26; reenacted and amended, Laws, 1999, ch. 534, § 26; reenacted and amended, Laws, 2004, ch. 586, § 26, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 26 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 26 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 26 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 58, 59.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-77. Qualifications of applicant as land surveyor or land surveyor-in-training.

(1) The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for licensure as a professional surveyor:

(a)(i) A bachelor's degree in geomatics, surveying or surveying technology approved by the board consisting of a minimum of one hundred twenty (120) semester hours, or the equivalent, in surveying curriculum subjects and a specific record of four (4) years of qualifying surveying experience; or

(ii) A bachelor's degree in a related science curriculum defined by board rule, consisting of sixty-two (62) semester hours in surveying curriculum subjects as defined by board rule, and a specific record of five (5) years of qualifying surveying experience; or

(iii) A bachelor's degree in a related science curriculum defined by board rule, and a specific record of six (6) years of qualifying surveying experience; or

(iv) An associate degree, or its equivalent, in a curriculum approved by the board consisting of sixty-two (62) semester hours in surveying curriculum subjects as defined by board rule, and a specific record of seven (7) years or more of qualifying surveying experience; or

(v) A high school diploma, or its equivalent, and a specific record of twelve (12) years or more of qualifying surveying experience; and

(b) Successfully passing examinations in surveying prescribed by the board.

(2) The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for enrollment as a surveyor intern:

(a)(i) A bachelor's degree in geomatics, surveying or surveying technology approved by the board consisting of a minimum of one hundred twenty (120) semester hours, or the equivalent, in surveying curriculum subjects; or

(ii) A bachelor's degree in a related science curriculum defined by board rule consisting of sixty-two (62) semester hours in surveying curriculum subjects as defined by board rule; or

(iii) A bachelor's degree in a related science curriculum defined by board rule; or

(iv) An associate degree, or its equivalent, in a curriculum approved by the board consisting of sixty-two (62) semester hours in surveying curriculum subjects as defined by board rule; or

(v) A high school diploma, or its equivalent, and a specific record of eight (8) years or more of qualifying surveying experience; and

(b) Successfully passing examinations in surveying fundamentals prescribed by the board.

(3) No person shall be eligible for licensure as a professional surveyor who is not of good character and reputation, as defined in the board's Code of Professional Conduct.

SOURCES: Codes, 1942, § 8792-04; Laws, 1962, ch. 505, § 4; Laws, 1980, ch. 515, § 2; reenacted and amended, Laws, 1983, ch. 450, § 27; reenacted and amended, Laws, 1991, ch. 470, § 27; reenacted without change, Laws, 1999, ch. 416, § 27; reenacted without change, Laws, 1999, ch. 534, § 27; reenacted and amended, Laws, 2004, ch. 586, § 27; Laws, 2009, ch. 360, § 1, eff from and after July 1, 2009.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the introductory paragraph of (2) in the version of the section effective from and after July 1, 2016. The word "enrollment" was substituted for "certification." The Joint Committee ratified the correction at its July 13, 2009, meeting.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

CJS. 53 C.J.S., Licenses §§ 62, 63, 65, 66.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-79. Application and registration fees.

Application for enrollment as a surveyor intern or for licensure as a professional surveyor shall be on forms prescribed and furnished by the board, shall contain statements made under oath showing the applicant's education and a detailed summary of the applicant's qualifying experience. Applications for licensure or relicensure as a professional surveyor shall also contain not less than five (5) references, of whom three (3) or more shall be professional surveyors having personal knowledge of the applicant's surveying experience.

The application fee for licensure as a professional surveyor shall be determined by the board, but shall not exceed Seventy-five Dollars ($75.00), which fee shall accompany the application.

The application fee for enrollment as a surveyor intern shall be determined by the board, but shall not exceed Twenty-five Dollars ($25.00), which fee shall accompany the application.

Whenever an applicant is cited to an examination or reexamination, an additional fee equal to the actual cost of the examination shall be paid by the applicant.

SOURCES: Codes, 1942, § 8792-05; Laws, 1962, ch. 505, § 5; Laws, 1980, ch. 515, § 3; reenacted and amended, Laws, 1983, ch. 450, § 28; reenacted and amended, Laws, 1991, ch. 470, § 28; reenacted without change, Laws, 1999, ch. 416, § 28; reenacted and amended, Laws, 1999, ch. 534, § 28; reenacted and amended, Laws, 2004, ch. 586, § 28, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 28 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 28 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 28 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

CJS. 53 C.J.S., Licenses §§ 70-72.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-81. Examinations.

Examinations shall be required for enrollment as a surveyor intern and licensure as a professional surveyor. The examinations shall be held at such time and place as the board may determine.

The scope of the examinations and the methods and procedures shall be prescribed by the board with special reference to the applicant's ability to exercise direct control and personal supervision of all surveying functions.

The board shall cite applicants to examinations in accordance with its rules and regulations.

SOURCES: Codes, 1942, § 8792-06; Laws, 1962, ch. 505, § 6; Laws, 1980, ch. 513, § 4; reenacted and amended, Laws, 1983, ch. 450, § 29; reenacted and amended, Laws, 1991, ch. 470, § 29 ; reenacted without change, Laws, 1999, ch. 416, § 29; reenacted without change, Laws, 1999, ch. 534, § 29; reenacted and amended, Laws, 2004, ch. 586, § 29, eff from and after July 1, 2004.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

CJS. 53 C.J.S., Licenses § 63.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-83. Certificates; seals.

The board shall issue a certificate, upon payment of the required fee, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements therefor. In the case of licensed professional surveyors, the certificate shall authorize the "practice of surveying." In the case of a surveyor intern, the certificate shall state that the applicant has successfully passed the examination in fundamental land surveying subjects required by the board and has been enrolled as a " surveyor intern." Certificates shall show the full name of the professional surveyor or surveyor intern, shall have a serial number and shall be signed by the president and the secretary of the board under seal of the board.

The issuance of a certificate of licensure by this board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a licensed professional surveyor, while the said certificate remains unrevoked or unexpired.

Each person licensed as a professional surveyor after June 30, 1991, but prior to July 1, 2004, shall, upon licensure, obtain a seal of the design authorized by the board, bearing the licensee's name and the legend "Registered Professional Land Surveyor." Each person licensed as a professional land surveyor after June 30, 1991, but prior to July 1, 2004, who is also licensed as a professional engineer in accordance with Sections 73-13-1 through 73-13-45 may also obtain one (1) seal bearing the licensee's name and the legend "Registered Professional Engineer and Professional Land Surveyor." Any person who, before July 1, 1991, but prior to July 1, 2004, was licensed under this chapter as a land surveyor or as both a professional engineer and a land surveyor may continue to use the seal or seals that he obtained and that were authorized by the board to be used by such person before July 1, 1991. From and after July 1, 2004, each person licensed as a professional surveyor shall, upon licensure, obtain a seal of the design and authorized by the board, bearing the licensee's name and the legend "Professional Surveyor." From and after July 1, 2004, each person licensed as a professional surveyor, who is also licensed as a professional engineer, may also obtain a seal bearing the licensee's name and the legend "Professional Engineer and Professional Surveyor."

Plats, maps and reports prepared by a licensee shall be stamped with the seal during the life of the licensee's certificate, but it shall be unlawful for anyone to stamp or seal any documents with the seal after the certificate of the licensee named thereon has expired or been revoked or suspended. It shall be unlawful for anyone other than the licensee to whom the seal has been issued to stamp or seal any documents utilizing such seal.

SOURCES: Codes, 1942, § 8792-07; Laws, 1962, ch. 505, § 7; Laws, 1980, ch. 515, § 5; reenacted and amended, Laws, 1983, ch. 450, § 30; reenacted and amended, Laws, 1991, ch. 470, § 30; reenacted without change, Laws, 1999, ch. 416, § 30; reenacted and amended, Laws, 1999, ch. 534, § 30; reenacted and amended, Laws, 2004, ch. 586, § 30, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 30 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 30 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 30 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Expiration and renewal of certificates of licensure, see § 73-13-83.

Disciplinary actions, see § 73-13-89.

Appeals, see § 73-13-93.

Violations and penalties, see § 73-13-95.

Injunctions to restrain unlawful practice of profession, see § 73-51-1.

§ 73-13-85. Expiration and renewals.

Certificates of licensure shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the board to notify every person licensed under Sections 73-13-71 through 73-13-105 of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one (1) year; such notice shall be sent by first-class mail to the last known address of the licensee at least one (1) month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of December by the payment of a fee not to exceed Fifty Dollars ($50.00). A person who is licensed as a professional surveyor and as a professional engineer may effect both renewals by the payment of a single fee not to exceed Seventy-five Dollars ($75.00). The failure on the part of any licensee to renew his certificate annually in the month of December as required above shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after the month of December shall be increased ten percent (10%) for each month that payment of renewal is delayed; however, the maximum fee for delayed renewal shall not exceed five (5) times the normal renewal fee.

If a certificate has expired for six (6) months or more, the licensee shall be required to submit a new application, paying back fees and submitting proof of continuing professional competency compliance. If the certificate has expired for five (5) years or more, in addition to submitting a new application and proof of continuing professional competency compliance, reexamination in the principles and practice may be required. The reexamination may be waived by the board provided the applicant has continued to practice under another jurisdiction from the date of expiration of his certificate.

SOURCES: Codes, 1942, § 8792-08; Laws, 1962, ch. 505, § 8; Laws, 1980, ch. 515, § 6; reenacted and amended, Laws, 1983, ch. 450, § 31; reenacted and amended, Laws, 1991, ch. 470, § 31; reenacted without change, Laws, 1999, ch. 416, § 31; reenacted and amended, Laws, 1999, ch. 534, § 31; reenacted and amended, Laws, 2004, ch. 586, § 31, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 31 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 31 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 31 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 80, 82, 84-86, 88, 91.

§ 73-13-87. Acceptance of certificates from other states, territories, and countries.

The board may, upon application therefor and the payment of a fee to be determined by the board, issue a certificate of licensure as a professional surveyor to any person who holds a certificate of licensure issued to him by the proper authority of any state or territory or possession of the United States, or of any country, provided that the applicant's qualifications meet the requirements of Sections 73-13-71 through 73-13-105 and the rules established by the board.

SOURCES: Codes, 1942, § 8792-10; Laws, 1962, ch. 505, § 10; Laws, 1980, ch. 515, § 7; reenacted and amended, Laws, 1983, ch. 450, § 32; reenacted and amended, Laws, 1991, ch. 470, § 32; reenacted without change, Laws, 1999, ch. 416, § 32; reenacted and amended, Laws, 1999, ch. 534, § 32; reenacted and amended, Laws, 2004, ch. 586, § 32, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 32 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 32 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 32 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

§ 73-13-89. Disciplinary actions.

The powers and duties of the board regarding disciplinary actions against any person, including nonlicensees accused of violating any of the laws of the State of Mississippi regarding the practice of surveying or the rules, regulations, bylaws, or standards of conduct and ethics pertaining thereto as duly promulgated by the board, as well as the procedures for conducting said disciplinary proceedings, the penal sanctions available to the board in the event the charges are established, and the procedures for appeal from such actions of the board shall be the same as those set forth in Sections 73-13-37 and 73-13-39 regarding actions against persons charged with similar violations related to the practice of engineering.

SOURCES: Codes, 1942, § 8792-11; Laws, 1962, ch. 505, § 11; reenacted and amended, Laws, 1983, ch. 450, § 33; reenacted without change, Laws, 1991, ch. 470, § 33; reenacted without change, Laws, 1999, ch. 416, § 33; reenacted and amended, Laws, 1999, ch. 534, § 33; reenacted and amended, Laws, 2004, ch. 586, § 33, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 33 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 33 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 33 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — The power of board concerning disciplinary actions, see § 73-13-15.

Appeals, see § 73-13-93.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 37 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

11 Am. Jur. Proof of Facts 2d 397, Surveyor's Failure to Exercise Due Care in Making Survey.

CJS. 53 C.J.S., Licenses §§ 82 et seq.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-91. Repealed.

Repealed by Laws of 1991, ch. 470, § 38, eff from and after July 1, 1991.

[Codes, 1942, § 8792-12; Laws, 1962, ch. 505, § 12; reenacted without change, Laws, 1983, ch. 450, § 34, eff from and after July 1, 1983]

Editor's Note — Former § 73-13-91 provided for reissuance of certificates.

§ 73-13-93. Appeals.

Any person who may feel aggrieved by an action of the board denying or revoking his certificate of licensure or relicensure as a professional surveyor or enrollment as surveyor intern may appeal therefrom to the chancery court of the county of residence of such person and, after full hearing, the court shall make such order sustaining or reversing the action of the board as to it may seem just and proper. However, in case of a nonresident licensee or applicant, such appeal shall be taken or made to the Chancery Court of the First Judicial District of Hinds County, Mississippi.

Actions taken by the board in suspending a certificate of licensure when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a suspension of a certificate that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SOURCES: Codes, 1942, § 8792-13; Laws, 1962, ch. 505, § 13; reenacted without change, Laws, 1983, ch. 450, § 35; reenacted and amended, Laws, 1991, ch. 470, § 34; Laws, 1996, ch. 507, § 39; reenacted without change, Laws, 1999, ch. 416, § 34; reenacted without change, Laws, 1999, ch. 534, § 34; reenacted and amended, Laws, 2004, ch. 586, § 34, eff from and after July 1, 2004.

Cross References — Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 53, 54.

CJS. 53 C.J.S., Licenses §§ 82 et seq.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-95. Violations and penalties.

Any person who shall practice, or offer to practice, surveying in this state without being licensed in accordance with the provisions of Sections 73-13-71 through 73-13-105, or any person presenting or attempting to use as his own the certificate of licensure or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of licensure, or any person who shall falsely impersonate any other licensee of like or different name, or any person who shall knowingly attempt to use a license which has been expired for more than twelve (12) consecutive months or revoked certificate of licensure, or any person who shall violate any of the provisions of Sections 73-13-71 through 73-13-105, shall be guilty of a misdemeanor, and shall, upon conviction of a first offense of violating this section, be sentenced to pay a fine of not less than One Hundred Dollars ($100.00), nor more than Five Thousand Dollars ($5,000.00), and in addition thereto shall make restitution to the board for investigative expenses and court costs, or suffer imprisonment for a period of not exceeding three (3) months, or both. Upon any second and subsequent conviction of violating this section, such person shall be sentenced to pay a fine of not less than Five Thousand Dollars ($5,000.00), nor more than Ten Thousand Dollars ($10,000.00), or by imprisonment in the county jail for not more than one (1) year, or both. The criminal penalties provided for in this section may be assessed in addition to those civil penalties provided for in Section 73-13-37.

Unless licensed in accordance with the provisions of Sections 73-13-71 through 73-13-105, no person shall:

(a) Directly or indirectly employ, use, cause to be used or make use of any of the following terms or any combination, variations or abbreviations thereof as a professional, business or commercial identification, title, name, representation, claim, asset or means of advantage or benefit: "surveyor," "professional surveyor," "licensed surveyor," "registered surveyor," "registered professional surveyor," "licensed professional surveyor," "surveyed," "surveying," "professional land surveyor," or "licensed professional land surveyor";

(b) Directly or indirectly employ, use, cause to be used or make use of any letter, abbreviation, word, symbol, slogan, sign or any combinations or variations thereof, which in any manner whatsoever tends or is likely to create any impression with the public or any member thereof that any person is qualified or authorized to practice surveying; or

(c) Receive any fee or compensation or the promise of any fee or compensation for performing, offering or attempting to perform any service, work, act or thing which is any part of the practice of surveying.

Any person, firm, partnership, association or corporation which shall do, offer or attempt to do any one or more of the acts or things set forth in items (a) through (c) of the preceding paragraph shall be conclusively presumed and regarded as engaged in the practice of surveying.

It shall be the duty of all duly constituted officers of the law of this state, or any political subdivision thereof, to enforce the provisions of Sections 73-13-71 through 73-13-105 and to prosecute any persons violating same. Except as otherwise authorized in Section 7-5-39, the Attorney General of the state or his assistant shall act as legal adviser of the board and render such legal assistance as may be necessary in carrying out the provisions of Sections 73-13-71 through 73-13-105.

SOURCES: Codes, 1942, § 8792-14; Laws, 1962, ch. 505, § 14; reenacted and amended, Laws, 1983, ch. 450, § 36; reenacted and amended, Laws, 1991, ch. 470, § 35; reenacted without change, Laws, 1999, ch. 416, § 35; reenacted and amended, Laws, 1999, ch. 534, § 35; reenacted and amended, Laws, 2004, ch. 586, § 35; Laws, 2009, ch. 360, § 2; Laws, 2012, ch. 546, § 34, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 35 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 35 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 35 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Cross References — Injunctions to restrain unlawful practice of profession, see § 73-51-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 43.

CJS. 53 C.J.S., Licenses §§ 125-132.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-97. Application of Sections 73-13-71 through 73-13-105.

Sections 73-13-71 through 73-13-105 shall not be construed to prevent or to affect:

(a) **Other professions or trades.** — The practice of any other legally recognized profession or trade, including the practice of geology as regulated pursuant to Title 73, Chapter 63; or

(b) **Employees and subordinates.** — The work of an employee or a subordinate of a person holding a certificate of registration under Sections 73-13-71 through 73-13-105; providing such work does not include final decisions and is done under the direct responsibility, checking and supervision of a person holding a certificate of licensure under Sections 73-13-71 through 73-13-105; or

(c) **Government officers and employees.** — The practice of officers and employees of the government of the United States while engaged within this state in the practice of surveying for said government; or

(d) **Certain elected or appointed county surveyors.** — A county surveyor as provided for in Section 135 of the Mississippi Constitution, and Sections 19-27-1 through 19-27-35 implementing the constitutional provision, who holds the office of county surveyor by either election or appointment, shall be exempt, through December 31, 1983, from the provisions of Sections 73-13-71 through 73-13-105 insofar as his statutory duties within the boundaries of the county in which he is duly elected or appointed are concerned. From and after January 1, 1984, such surveyor shall not be exempt from the provisions of Sections 73-13-71 through 73-13-105 unless he held the office of county surveyor by either election or appointment on December 31, 1983; or

(e) **Employees of railroad, public service and/or utility companies.** — The work or practice of a regular employee of a railroad, or a public service company or public utility, by rendering to such company surveying service in connection with its facilities which are subject to regulation, supervision and control in order to safeguard life, health and property by the Public Service Commission or the Mississippi Department of Transportation of this state, shall be exempt so long as such person is thus actually and exclusively employed and no longer; or

(f) The work of a regular employee of a railroad, rendering to the railroad surveying services in connection with its facilities within the exclusive scope of his employment provided that:

(i) Any new right-of-way acquisitions for construction of rail lines by class one railroads shall be surveyed and platted in compliance with the Mississippi Minimum Standards for Land Surveying by a Mississippi professional surveyor; and

(ii) Upon the removal of track and disposition of an abandoned rail line the railroad shall retain and make available upon reasonable request from Mississippi licensed surveyors the railroad's valuation surveys for any such abandoned rail line.

(g) The practice of geologists performing geologic mapping insofar as such practice does not encompass tasks or projects included by statute in the scope of work comprising the practice of professional surveying as defined in Title 73, Chapter 13.

(h) Nothing in this chapter prohibits any municipality or county from creating maps for use in planning, zoning, taxing, elections, police or fire, E-911, public works, transportation or related activities. However, if any such document does not bear the seal and signature of a professional surveyor, the document shall not be considered to be certifiably accurate as to position or location, nor shall the document be considered to be an official survey.

SOURCES: Codes, 1942, § 8792-15; Laws, 1962, ch. 505, § 15; Laws, 1980, ch. 515, § 8; reenacted and amended, Laws, 1983, ch. 450, § 37; reenacted and amended, Laws, 1991, ch. 470, § 36; reenacted without change, Laws, 1999, ch. 416, § 36; reenacted and amended, Laws, 1999, ch. 534, § 36; reenacted and amended, Laws, 2004, ch. 586, § 36, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 36 of ch. 416, Laws of 1999, effective from and after July 1, 1999 (approved March 18, 1999), reenacted this section. Section 36 of ch. 534, Laws of 1999, effective July 1, 1999 (approved April 16, 1999), also reenacted and amended this section. As set out above, this section reflects the language of Section 36 of ch. 534, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the

amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 29 et seq.

CJS. 53 C.J.S., Licenses §§ 56, 57.

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-99. Repealed.

Repealed by Laws of 2006, ch. 598, § 8 effective from and after July 1, 2006.

[Laws, 1979, ch. 301, § 27; ch. 357, § 12; Laws, 1983, ch. 450, § 38; Laws, 1991, ch. 470, § 37; Laws, 1999, ch. 416, § 37; Laws, 1999, ch. 534, § 37; reenacted and amended, Laws, 2004, ch. 586, § 37, eff from and after July 1, 2004.]

Editor's Note — Former § 73-13-99 was entitled: "Repeal of Sections 73-13-1 through 73-13-45 and 73-13-71 through 73-13-103."

§ 73-13-101. Repealed.

Repealed by Laws of 1991, ch. 470, § 38, eff from and after July 1, 1991.
[Laws, 1980, ch. 515, § 9; Laws, 1983, ch. 450, § 39]

Editor's Note — Former § 73-13-101 was entitled: Registration of practicing surveyors—notice.

§ 73-13-103. Immunity of land surveyors from criminal liability for trespass.

(1) For the purposes of this section, the term "surveyor" means a licensed professional surveyor as defined in Section 73-13-71, and any person who is employed by or under the direct supervision of a professional surveyor licensed under Sections 73-13-71 through 73-13-97.

(2) A surveyor may enter in or upon public or private lands or waters, except buildings, while in the lawful performance of surveying duties without criminal liability for trespass; however, a surveyor shall make a good faith attempt to announce and identify himself and his intentions before entering upon private property and must present documentation sufficient to identify him as a surveyor to anyone requesting such identification.

(3) The provisions of this section do not relieve a surveyor from any civil liability that otherwise is actionable at law or in equity, and do not relieve a surveyor from criminal liability for trespass if the entry in or upon the property extends beyond the property or area that is necessary to actually perform the surveying duties.

(4) Surveyors shall be personally liable for any damage caused to private property when exercising entry under this section. No cause of action shall lie

against a landowner for damages to a surveyor while on such lands unless the damage is caused by the intentional tortious conduct of landowner or his agent.

SOURCES: Laws, 1997, ch. 425, § 1; brought forward without change, Laws, 1999, ch. 416, § 38; reenacted and amended, Laws, 2004, ch. 586, § 38, eff from and after July 1, 2004.

Cross References — Crime of trespass, see § 97-17-85 et seq.

RESEARCH REFERENCES

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

§ 73-13-105. Professional land surveying firm; requirement that firm have at least one registered professional land surveyor as principal officer or partner.

As of January 1, 2005, no corporation, firm or partnership may engage in the practice of professional surveying in this state unless it has been issued a certificate of authority by the board. In order to qualify for a certificate of authority, a corporation, firm or partnership must have at least one (1) Mississippi-licensed professional surveyor as a principal officer or partner of the firm who has management responsibility for such practice.

The board shall have the authority to promulgate rules and regulations setting procedures, standards and other requirements for issuing and maintaining a certificate of authority for corporations, firms or partnerships practicing surveying in the State of Mississippi.

Applications for a certificate of authority shall be on the forms prescribed and furnished by the board, and provide all the information required by said board. The board shall establish a fee for the certificate of authority application, not to exceed Two Hundred Fifty Dollars ($250.00). Any corporation, firm or partnership having the necessary qualifications as prescribed herein and the rules and regulations of the board shall be issued a certificate of authority for said corporation, firm or partnership to practice surveying and to contract and collect fees for furnishing this service.

Each certificate of authorization will expire on December 31 of each year. It shall be the duty of the board to notify every corporation, firm or partnership holding a certificate of authority under Sections 73-13-71 through 73-13-105 of the date of the expiration of the certificate and the amount of the fee that shall be required for its renewal for one (1) year. The renewal fee shall not exceed One Hundred Fifty Dollars ($150.00); penalties for late renewal shall be ten percent (10%) per month that payment is delayed. Additionally, if any of the information on the initial or any subsequent renewal application changes for the corporation, firm or partnership, said corporation, firm or partnership shall notify the board in the form and manner prescribed by the board within thirty (30) days of the change.

Effective January 1, 2005, the Secretary of State shall not issue a certificate of incorporation, licensure or authorization to an applicant or licensure as a foreign firm to a corporation, firm or partnership which includes in its name, or among the objectives for which it is established, any of the words, "surveyor," "surveying" or any modification or derivation thereof, unless the board has issued for said applicant a certificate of authority or a letter indicating the eligibility of such applicant to receive such a certificate. The corporation, firm or partnership applying shall supply such certificate or letter from the board with its application for incorporation, licensure or authorization to the Secretary of State.

A surveyor who renders occasional, part-time or consulting surveying services to or for a corporation, firm or partnership may not, for the purposes of this section, be designated as being responsible for the professional activities of the firm.

No such corporation, firm or partnership shall be relieved of responsibility for the conduct or acts of its agents, employees, officers, partners, members or managers by reason of its compliance with the provisions of this section. No individual practicing surveying under this chapter shall be relieved of responsibility for surveying services performed by reason of employment or other relationship with a firm holding an authorization certificate.

SOURCES: Laws, 1999, ch. 534, § 38; Laws, 2004, ch. 586, § 39, eff from and after July 1, 2004.

Cross References — Sole proprietorship, owned and operated by licensee under this chapter, or professional association of licensed professional engineers or professional surveyors not required to obtain certificate of authority under this section, see § 73-13-3.

RESEARCH REFERENCES

Practice References. Clark on Surveying and Boundaries, Seventh Edition (Michie).

CHAPTER 14

Hearing Aid Dealers

Sec.
73-14-1. Administration of chapter.
73-14-3. Definitions.
73-14-5. Persons and practices exempt.
73-14-7. Powers and duties of State Board of Health; Hearing Aid Advisory Council.
73-14-9 and 73-14-11. Repealed.
73-14-13. Bills of sale to be delivered to persons supplied with hearing aids.
73-14-15. Furnishing of hearing aids without license or certificate of endorsement prohibited.
73-14-17. Application for license [Repealed effective July 1, 2020].
73-14-19. Applicant to appear for examination upon payment of fee [Repealed effective July 1, 2020].
73-14-21. Subjects included in examination.
73-14-23. Registration and issuance of licenses.
73-14-25. Licensure upon passing examination in other jurisdiction; reciprocity.
73-14-27. Temporary license [Repealed effective July 1, 2020].
73-14-29. Repealed.
73-14-31. Renewal of licenses; continuing education requirement [Repealed effective July 1, 2020].
73-14-33. Place of practice; licensee with principal place of business not within state.
73-14-35. Grounds for revocation or suspension of license or certificate of endorsement.
73-14-37. Revocation proceedings.
73-14-39. Appeal.
73-14-41. Prohibited acts.
73-14-43. Penalties.
73-14-45. Enforcement.
73-14-47. Disposition of fees.
73-14-49. Repealed.

§ 73-14-1. Administration of chapter.

The State Board of Health established and empowered by Section 41-3-1 et seq., Mississippi Code of 1972, shall discharge as additional duties and responsibilities the provisions of this chapter in the examination, licensing and regulation of persons who sell and fit hearing aids and who test hearing while engaged in the selling and fitting of hearing aids.

SOURCES: Codes, 1942, § 7129-101; Laws, 1972, ch. 523, § 1; reenacted, Laws, 1983, ch 486, § 1; reenacted, Laws, 1991, ch. 351, § 1; reenacted, Laws, 1992, ch. 438, § 1; reenacted, Laws, 1995, ch. 503, § 1; reenacted without change, Laws, 2000, ch. 484, § 1; brought forward without change, Laws, 2005, ch. 460, § 1, eff from and after June 30, 2005.

Editor's Note — Section 41-3-1, referred to in this section, was repealed by § 1, ch. 514, Laws of 2007, effective March 30, 2007.

Cross References — Regulation of speech pathologists and audiologists, see §§ 73-38-1 et seq.

RESEARCH REFERENCES

ALR. Validity and construction of state statutes regulating hearing aid fitting or sales. 96 A.L.R.3d 1030.

CJS. 53 C.J.S., Licenses §§ 58-60, 62, 65, 66.

§ 73-14-3. Definitions.

The following definitions apply as used in this chapter, unless the context otherwise requires:

(a) The "board" means the Mississippi State Board of Health.

(b) "License" includes a temporary license.

(c) "Hearing aid" shall mean any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories, including ear molds, but excluding such things as telephone devices, batteries and cords.

(d) "Hearing aid specialist" means an individual licensed by the board to engage in the practice of dispensing and fitting hearing aids.

(e) "Practice of dispensing and fitting hearing aids" means the evaluation or measurement of powers or range of human hearing by means of an audiometer and the consequent selection or adaptation or sale of hearing aids intended to compensate for hearing loss, including the making of an impression of the ear.

(f) "Sell" or "sale" means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers.

(g) "Unethical conduct" means:

(i) The obtaining of any fee or the making of any sale by fraud or misrepresentation.

(ii) Knowingly employing directly or indirectly any suspended or unlicensed person to perform any work covered by this chapter.

(iii) Representing that the professional services or advice of a physician or audiologist will be used or made available in the selling, fitting, adjustment, maintenance or repair of hearing aids when that is not true, or using the words "doctor," "clinic," "clinical," and/or "research audiologist," "audiologic," or any other like words, abbreviations or symbols which tend to connote audiological or professional services, when such use is not accurate.

(iv) Permitting another to use his license or certificate or endorsement.

(v) Quoting prices of competitive hearing aids or devices without disclosing that they are not the present current prices, or showing, demonstrating, or representing competitive models as being current models when such is not the fact.

(vi) Imitating or simulating the trademarks, trade names, brands or labels of competitors with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers.

(vii) Defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or falsely disparaging the products of competitors in any respect, or their business methods, selling prices, values, credit terms, policies or services.

(viii) Stating or implying that the use of any hearing aid will restore or preserve hearing, prevent or retard progression of a hearing impairment.

(ix) Dispensing and selling a hearing aid to a child under the age of eighteen (18) years who has not been examined and cleared for hearing aid use by a licensed physician within a six-month period immediately prior to dispensing and selling the hearing aid.

(x) Representing himself as being an audiologist as defined in Section 73-38-3.

SOURCES: Codes, 1942, § 7129-102; Laws, 1972, ch. 523, § 2; Laws, 1983, ch. 486, § 2; Laws, 1991, ch. 351, § 2; Laws, 1992, ch. 438, § 2; Laws, 1995, ch. 503, § 2; reenacted without change, Laws, 2000, ch. 484, § 2; brought forward without change, Laws, 2005, ch. 460, § 2, eff from and after June 30, 2005.

Cross References — Mississippi State Board of Health generally, see § 41-3-1 et seq.

Grounds for revocation or suspension of license, see § 73-14-35.

Revocation proceedings and appeal, see §§ 73-14-37, 73-14-39.

§ 73-14-5. Persons and practices exempt.

(1) This chapter is not intended to prevent any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids, provided such person or organization employing such person does not sell hearing aids or accessories thereto, except in the case of ear molds to be used only for the purpose of audiologic evaluation.

(2) This chapter shall not apply to any physician or surgeon licensed by the State of Mississippi.

(3) This chapter does not apply to a person while he is engaged in the fitting of hearing aids, provided it is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public tax-supported institution or agency or nonprofit organization, unless such person or institution or agency sells hearing aids, and/or accessories, except ear molds.

SOURCES: Codes, 1942, § 7129-105; Laws, 1972, ch. 523, § 5; reenacted, Laws, 1983, ch. 486, § 3; reenacted, Laws, 1991, ch. 351, § 3; reenacted, Laws, 1992, ch. 438, § 3; reenacted, Laws, 1995, ch. 503, § 3; reenacted without change, Laws, 2000, ch. 484, § 3; brought forward without change, Laws, 2005, ch. 460, § 3, eff from and after June 30, 2005.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 24 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 73.

CJS. 53 C.J.S., Licenses §§ 56, 57.

§ 73-14-7. Powers and duties of State Board of Health; Hearing Aid Advisory Council.

(1) The powers and duties of the Mississippi State Board of Health under this chapter are as follows:

(a) To authorize all disbursements necessary to carry out the provisions of this chapter.

(b) To supervise and administer qualifying examinations to test the knowledge and proficiency of applicants for a license.

(c) To license persons who apply to the board and who are qualified to practice the fitting, dispensing and selling of hearing aids.

(d) To purchase and maintain or rent audiometric equipment and facilities necessary to carry out the examination of applicants for license.

(e) To issue and renew licenses.

(f) To suspend or revoke licenses pursuant to this chapter.

(g) To appoint representatives to conduct or supervise the examining of applicants for license.

(h) To designate the time and place for examining applicants for license.

(i) To make and publish rules and regulations not inconsistent with the laws of this state which are necessary to carry out the provisions of this chapter, in compliance with the provisions of Section 25-43-1 et seq., Mississippi Code of 1972, which is the Administrative Procedures Law.

(j) To require the periodic inspection and calibration of audiometric testing equipment and to carry out the periodic inspection of facilities of persons who practice the fitting or selling of hearing aids.

(k) To establish minimum requirements of test procedures and test equipment to be used in the fitting of hearing aids pursuant to this chapter, also the retention of all fittings and records of fittings by the dealer.

(2) The Hearing Aid Advisory Council appointed pursuant to Section 73-14-7 is hereby continued and reconstituted as follows:

The council shall consist of seven (7) members, four (4) of whom are licensed hearing aid specialists who do not currently hold any other professional license regulated by the State Board of Health, one (1) of whom is a licensed audiologist, one (1) of whom is a licensed physician, board certified in otolaryngology, and one (1) of whom is a person of the board's own choosing from the state at large, and said person shall be hearing impaired. The person of the board's choosing shall not be a member of nor have personal interest in any organization associated with hearing aid specialists.

No person shall serve more than two (2) full consecutive terms. No more than three (3) members shall be appointed to said council from any one (1)

Supreme Court district. The hearing aid specialist appointments may be made from a list of at least three (3) licensed hearing aid specialists furnished by the Mississippi Hearing Aid Dealer Association, or its successor, for each vacancy on the council, who have practiced and resided for three (3) years in the state. The audiologist appointment may be made from a list of at least three (3) licensed audiologists furnished by the Mississippi Speech and Hearing Association, who has practiced and resided for three (3) years in the state. The licensed physician appointment may be made from a list of at least three (3) board certified otolaryngologists furnished by the Mississippi Eye, Ear, Nose and Throat Association, who has practiced and resided for three (3) years in the state. Appointments to the council to fill a vacancy occurring for other than expiration of a term shall only be made for the remainder of the expired term. The council shall promulgate such rules and regulations by which it shall conduct its business. Members of the council shall receive no salary for services performed on the council but may be reimbursed for their reasonable and necessary actual expenses incurred in the performance of the same, from funds provided for such purpose. The council shall assist and advise the board in the development of regulations and standards governing the licensure of hearing aid dealers. Council members may be removed from office if found guilty of any violation of any provision of this chapter. A council member subject to formal disciplinary proceedings shall disqualify himself from any council business until the charge is resolved. A member must also disqualify himself from any council business on which he may not make an objective evaluation and/or decision.

SOURCES: Codes, 1942, § 7129-116; Laws, 1972, ch. 523, § 16; Laws, 1983, ch. 486, § 4; Laws, 1991, ch. 351, § 4; Laws, 1992, ch. 438, § 4; Laws, 1995, ch. 503, § 4; reenacted and amended, Laws, 2000, ch. 484, § 4; brought forward without change, Laws, 2005, ch. 460, § 4, eff from and after June 30, 2005.

Editor's Note — Pursuant to § 25-43-1.101(3), any reference in this section to § 25-43-1 et seq. shall be deemed to mean and refer to § 25-43-1.101 et seq.

Cross References — Licensing of audiologists, see § 73-38-1 et seq.

§§ 73-14-9 and 73-14-11. Repealed.

Repealed by Laws of 1983, ch. 486, § 23, eff from and after July 1, 1983.

§ 73-14-9. [Codes, 1942, § 7129-118; Laws, 1972, ch. 523, § 18; Laws, 1974, ch. 360]

§ 73-14-11. [Codes, 1942, § 7129-119; Laws, 1972, ch. 523, § 19]

Editor's Note — Former § 73-14-9 provided for a council of advisors of hearing aid dealers. For similar provisions, see § 73-14-7.

Former § 73-14-11 provided for the powers and duties of the council of advisors of hearing aid dealers.

§ 73-14-13. Bills of sale to be delivered to persons supplied with hearing aids.

Any person who practices the fitting or dispensing of hearing aids shall deliver to each person supplied with a hearing aid, by him or at his order or direction, a bill of sale which shall contain his signature and show the address of his regular place of practice and the number of his license, together with a description of the make and model of the hearing aid furnished, the serial number of the hearing aid furnished, and the amount charged therefor. The bill of sale shall also reveal the condition of the hearing device and whether it is new, used or rebuilt.

SOURCES: Codes, 1942, § 7129-104; Laws, 1972, ch. 523, § 4; Laws, 1978, ch. 317, § 1; reenacted, Laws, 1983, ch. 486, § 5; reenacted, Laws, 1991, ch. 351, § 5; reenacted, Laws, 1992, ch. 438, § 5; reenacted, Laws, 1995, ch. 503, § 5; reenacted without change, Laws, 2000, ch. 484, § 5; brought forward without change, Laws, 2005, ch. 460, § 5, eff from and after June 30, 2005.

§ 73-14-15. Furnishing of hearing aids without license or certificate of endorsement prohibited.

No person shall engage in the sale or practice of dispensing and fitting hearing aids or display a sign or in any other way advertise or hold himself out as a person who practices the dispensing and fitting of hearing aids unless he holds a current, unsuspended, unrevoked license by the board as provided in this chapter. The license required by this section shall be kept conspicuously posted in his office or place of business at all times.

SOURCES: Codes, 1942, § 7129-103; Laws, 1972, ch. 523, § 3; reenacted, Laws, 1983, ch. 486, § 6; reenacted, Laws, 1991, ch. 351, § 6; Laws, 1992, ch. 438, § 6; reenacted, Laws, 1995, ch. 503, § 6; reenacted without change, Laws, 2000, ch. 484, § 6; brought forward without change, Laws, 2005, ch. 460, § 6, eff from and after June 30, 2005.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 43.

CJS. 53 C.J.S., Licenses §§ 125 et seq.

§ 73-14-17. Application for license [Repealed effective July 1, 2020].

An applicant for a license shall pay a fee of One Hundred Dollars ($100.00) and shall show to the satisfaction of the board that he:

(a) Is twenty-one (21) years of age or older.

(b) Has an education equivalent to a four-year course in an accredited high school.

Any increase in the fee charged by the board under this section shall be in accordance with the provisions of Section 41-3-65.

No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Codes, 1942, § 7129-106; Laws, 1972, ch. 523, § 6; Laws, 1979, ch. 445, § 10; Laws, 1983, ch. 486, § 7; Laws, 1986, ch. 371, § 9; reenacted, Laws, 1991, ch. 351, § 7; Laws, 1992, ch. 438, § 7; reenacted, Laws, 1995, ch. 503, § 7; Laws, 1997, ch. 588, § 41; reenacted without change, Laws, 2000, ch. 484, § 7; brought forward without change, Laws, 2005, ch. 460, § 7; Laws, 2016, ch. 510, § 46, eff from and after July 1, 2016.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides:

"SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added the second paragraph; and deleted "Mississippi Code of 1972" at the end of the section.

Cross References — Application for temporary license by applicant who fulfills requirements of this section, see § 73-14-27.

Prohibition against selling, buying or altering a license or willfully making false statement in application for license or renewal of license, see § 73-14-41.

Penalties for violation, see § 73-14-43.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 30 et seq.

CJS. 53 C.J.S., Licenses §§ 58, 59 et seq.

§ 73-14-19. Applicant to appear for examination upon payment of fee [Repealed effective July 1, 2020].

An applicant for a license who is notified by the board that he has fulfilled the requirements of Section 73-14-17 and upon paying a testing fee determined by the department as necessary to cover the expense of the administration of the examination not to exceed One Hundred Fifty Dollars ($150.00), shall appear at a time, place and before such persons as the board may designate, to be examined by written and practical test in order to demonstrate that he is qualified to practice the fitting, dispensing and selling of hearing aids. Any increase in the fee charged by the department under this section shall be in accordance with the provisions of Section 41-3-65.

SOURCES: Codes, 1942, § 7129-107; Laws, 1972, ch. 523, § 7; reenacted, Laws, 1983, ch. 486, § 8; Laws, 1986, ch. 371, § 10; reenacted, Laws, 1991, ch. 351, § 8; Laws, 1992, ch. 438, § 8; reenacted, Laws, 1995, ch. 503, § 8; reenacted without change, Laws, 2000, ch. 484, § 8; brought forward without change, Laws, 2005, ch. 460, § 8; Laws, 2016, ch. 510, § 47, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added the last sentence.

Cross References — Right to apply for temporary license if applicant has not filed to take examine provided for under this section, see § 73-14-27.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

CJS. 53 C.J.S., Licenses § 63.

§ 73-14-21. Subjects included in examination.

The examination provided in Section 73-14-19 shall be selected by the board, with advice of the council, and may also include an oral examination at the discretion of the board. The tests under this section shall not include questions requiring a medical or surgical education. It is the intent of this section that the exams administered under this chapter be of such a level as to provide that at a minimum an individual having a high school education or its equivalent and with appropriate study, training and supervision under the direction of a qualified hearing aid specialist should be able to pass.

SOURCES: Codes, 1942, § 7129-108; Laws, 1972, ch. 523, § 8; reenacted, Laws, 1983, ch. 486, § 9; reenacted, Laws, 1991, ch. 351, § 9; Laws, 1992, ch. 438, § 9; Laws, 1995, ch. 503, § 9; reenacted without change, Laws, 2000, ch. 484, § 9; brought forward without change, Laws, 2005, ch. 460, § 9, eff from and after June 30, 2005.

§ 73-14-23. Registration and issuance of licenses.

The board shall register each applicant who satisfactorily passes the examination and then issue such applicant a license. The license shall be effective until July 1 next following issuance.

SOURCES: Codes, 1942, § 7129-109; Laws, 1972, ch. 523, § 9; reenacted, Laws, 1983, ch. 486, § 10; reenacted, Laws, 1991, ch. 351, § 10; reenacted, Laws, 1992, ch. 438, § 10; reenacted, Laws, 1995, ch. 503, § 10; reenacted without change, Laws, 2000, ch. 484, § 10; brought forward without change, Laws, 2005, ch. 460, § 10, eff from and after June 30, 2005.

Cross References — Licensure upon passing examination in other jurisdiction, see § 73-14-25.

Renewal of license, see § 73-14-31.

Grounds for revocation or suspension of license, see § 73-14-35.

Revocation proceedings, see § 73-14-37.

Appeal, see § 73-14-39.

Prohibition against selling, buying or altering a license or willfully making false statement in application for license or renewal of license, see § 73-14-41.

Penalties, see § 73-14-43.

RESEARCH REFERENCES

Am Jur. 16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 21 et seq.

CJS. 53 C.J.S., Licenses §§ 58, 59.

§ 73-14-25. Licensure upon passing examination in other jurisdiction; reciprocity.

The department may license as a hearing aid specialist, and furnish a certificate of licensure, to any applicant who presents evidence, satisfactory to the department of having passed an examination before a similar lawfully authorized examining agency or board of hearing aid specialists of another state or the District of Columbia, if the standards for registration of hearing aid specialists or for licensure as a hearing aid specialist in such state or district are determined by the department to be as high as those of this state, and if that jurisdiction affords licensees of this state reciprocity.

Any person making application for licensure under the provisions of this section may, at the discretion of the board, be required to pass an examination selected by the board.

The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Codes, 1942, § 7129-109; Laws, 1972, ch. 523, § 9; reenacted, Laws, 1983, ch. 486, § 11; reenacted, Laws, 1991, ch. 351, § 11; Laws, 1992, ch. 438, § 11; Laws, 1995, ch. 503, § 11; reenacted and amended, Laws, 2000, ch. 484, § 11; brought forward without change, Laws, 2005, ch. 460, § 11; Laws, 2013, ch. 350, § 15, eff from and after July 1, 2013.

Comparable Laws from other States — Alabama: Code of Ala. § 34-14-3.
Arkansas: A.C.A. § 17-100-304.
Florida: Fla. Stat. § 484.045.
Georgia: § 43-20-10.
Louisiana: La. R.S. § 37:2448.
North Carolina: N.C. Gen. Stat. § 93D-6.
Texas: Tex. Occ. Code § 402.209.
West Virginia: W. Va. Code § 30-26-11.

§ 73-14-27. Temporary license [Repealed effective July 1, 2020].

(1) An applicant who fulfills the requirements of Section 73-14-17 and who has not previously applied to take the examination provided under Section 73-14-19 may apply to the board for a temporary license.

(2) Upon receiving an application provided under subsection (1) of this section, the board shall issue a temporary license which shall entitle the applicant to practice the fitting and dispensing of hearing aids for a period ending thirty (30) days after the conclusion of the next examination given after the date of issue.

(3) No temporary license shall be issued by the board under this section unless the applicant shows to the satisfaction of the board that he is or will be supervised and trained by a person who:

(a) Holds a current and valid document of being National Board Certified in Hearing Instrument Sciences by the International Hearing Society (IHS) or its successor; or

(b) Holds a current and valid Certificate of Clinical Competence in Audiology from the American Speech-Language-Hearing Association (ASHA); or

(c) Has had a minimum of three (3) years' experience in the testing of hearing, fitting of hearing aids and dispensing of hearing aids.

(4) If a person who holds a temporary license issued under this section does not take the next examination given after the date of issue, the temporary license shall not be renewed, except for good cause shown to the satisfaction of the board.

(5) If a person who holds a temporary license issued under this section takes and fails to pass the next examination given after the date of issue, the board may renew the temporary license for a period ending thirty (30) days after the date of renewal is announced. In no event shall more than one (1) renewal be permitted. The fee for renewal shall be Fifty Dollars ($50.00), and any increase in the fee charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65.

SOURCES: Codes, 1942, § 7129-110; Laws, 1972, ch. 523, § 10; reenacted, Laws, 1983, ch. 486, § 12; Laws, 1986, ch. 371, § 11; reenacted, Laws, 1991, ch. 351, § 12; Laws, 1992, ch. 438, § 12; Laws, 1995, ch. 503, § 12; reenacted without change, Laws, 2000, ch. 484, § 12; brought forward without change, Laws, 2005, ch. 460, § 12; Laws, 2016, ch. 510, § 48, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added "and any increase ...Section 41-3-65" at the end of the last sentence of (5).

§ 73-14-29. Repealed.

Repealed by Laws of 1983, ch. 486, § 23, eff from and after July 1, 1983. [Codes, 1942, § 7129-113; Laws, 1972, ch. 523, § 13]

Editor's Note — Former § 73-14-29 provided for registration and licensing of current practitioners.

§ 73-14-31. Renewal of licenses; continuing education requirement [Repealed effective July 1, 2020].

Except as provided in Section 33-1-39, a person who practices the fitting and dispensing of hearing aids shall biennially pay to the board a fee of Two Hundred Dollars ($200.00) for a renewal of his license. A grace period of thirty (30) days shall be allowed after the expiration of a license, during which the same may be renewed on payment of a fee of Two Hundred Dollars ($200.00) to the board. The license of any person who fails to have his license renewed by the expiration of the grace period of thirty (30) days shall be considered to have lapsed. After the expiration of the grace period, the board may reinstate a license upon payment of a fee of Two Hundred Fifty Dollars ($250.00) to the board. No person who applies for reinstatement, whose license was suspended for the sole reason of failure to renew, shall be required to submit to any examination as a condition of reinstatement, provided such person applies for reinstatement within one (1) year from the date of lapse of the license.

The board shall require the applicant for license renewal to present evidence of the satisfactory completion of continuing education requirements as determined by the board.

In the event that any licensee shall fail to meet the annual educational requirement, his license shall not be renewed by the board, but the board may renew the license upon the presentation of satisfactory evidence of educational study of a standard approved by the board and upon the payment of all fees due. No governmental entity or agency shall be required to pay the fee or fees set forth in this section.

Any increase in the fees charged by the board under this section shall be in accordance with the provisions of Section 41-3-65.

SOURCES: Codes, 1942, § 7129-112; Laws, 1972, ch. 523, § 12; Laws, 1978, ch. 349, § 1; Laws, 1979, ch. 445, § 11; reenacted, Laws, 1983, ch. 486, § 13; Laws, 1986, ch. 371, § 12; reenacted, Laws, 1991, ch. 351, § 13; Laws, 1992, ch. 438, § 13; Laws, 1995, ch. 503, § 13; reenacted without change, Laws, 2000, ch. 484, § 13; brought forward without change, Laws, 2005, ch. 460, § 13; Laws, 2007, ch. 309, § 13; Laws, 2016, ch. 510, § 49, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."
Amendment Notes — The 2016 amendment added the last paragraph.

§ 73-14-33. Place of practice; licensee with principal place of business not within state.

A person who holds a license or temporary license shall notify the board in writing of the address of the place or places where he engages or intends to engage in the practice of fitting or dispensing of hearing aids.

The board shall keep a record of the places of practice of persons who hold licenses or temporary licenses. Any notice required to be given by the board to a person who holds a license or temporary license may be given by mailing it to him at the address given by him to the board.

A person who holds a license or temporary license to practice as a hearing aid specialist in this state but whose principal place of business is not in this state shall certify to the board that they will:

(a) Display their Mississippi license while conducting business in Mississippi; and

(b) Shall make all records regarding clients who are residents of Mississippi available to the licensing authority within seventy-two (72) hours of receiving such a request in writing.

Failure to comply with the requirements of (a) or (b) above shall constitute grounds for disciplinary action under the provisions of this chapter and/or rules and regulations promulgated pursuant to this chapter.

SOURCES: Codes, 1942, § 7129-111; Laws, 1972, ch. 523, § 11; reenacted, Laws, 1983, ch. 486, § 14; reenacted, Laws, 1991, ch. 351, § 14; Laws, 1992, ch. 438, § 14; Laws, 1995, ch. 503, § 14; reenacted without change, Laws, 2000, ch. 484, § 14; brought forward without change, Laws, 2005, ch. 460, § 14, eff from and after June 30, 2005.

Cross References — Grounds for revocation or suspension of license, see § 73-14-35.

Revocation proceedings, see § 73-14-37.

Appeal, see § 73-14-39.

Penalties, see § 73-14-43.

Enforcement, see § 73-14-45.

§ 73-14-35. Grounds for revocation or suspension of license or certificate of endorsement.

(1) Any person registered under this chapter may have his license or certificate revoked or suspended for a fixed period to be determined by the board for any of the following causes:

(a) Being convicted of an offense involving moral turpitude. The record of such conviction, or certified copy thereof from the clerk of the court where such conviction occurred or by the judge of that court, shall be sufficient evidence to warrant revocation or suspension.

(b) By securing a license or certificate under this chapter through fraud or deceit.

(c) For unethical conduct or for gross ignorance or inefficiency in the conduct of his practice.

(d) For knowingly practicing while suffering with a contagious or infectious disease.

(e) For the use of a false name or alias in the practice of his profession.

(f) For violating any of the provisions of this chapter or any rules or regulations promulgated pursuant to this chapter.

(g) For violating the provisions of any applicable federal laws or regulations.

(h) Discipline by another jurisdiction if at least one (1) of the grounds for the discipline is the same or substantially equivalent to those set forth in this chapter or rules and regulations promulgated pursuant to this chapter.

(2) In addition to the causes specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order

for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Codes, 1942, § 7129-114; Laws, 1972, ch. 523, § 14; Laws, 1983, ch. 486, § 15; reenacted, Laws, 1991, ch. 351, § 15; Laws, 1992, ch. 438, § 15; reenacted, Laws, 1995, ch. 503, § 15; Laws, 1996, ch. 507, § 40; reenacted without change, Laws, 2000, ch. 484, § 15; brought forward without change, Laws, 2005, ch. 460, § 15, eff from and after June 30, 2005.

Cross References — Unethical conduct defined, see § 73-14-3.

Prohibited acts, see § 73-14-41.

Penalties, see § 73-14-43.

Enforcement, see § 73-14-45.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 37 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41 et seq.

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-14-37. Revocation proceedings.

(1) Any person, whose license is sought to be revoked under the provisions of this chapter, shall be given thirty (30) days' notice, in writing, enumerating the charges and specifying a date for public hearing thereon. The hearing shall be held in the county where the person's business is conducted. The board may issue subpoenas, compel the attendance and testimony of witnesses, and place them under oath, the same as any court of competent jurisdiction where the hearing takes place.

(2) At all hearings the board may designate in writing one or more persons deemed competent by the board to conduct the hearing as trial examiner or trial committee, with the decision to be rendered in accordance with the provisions of subsection (3) of this section.

(3) After a hearing has been completed the trial examiner or trial committee who conducted the hearing shall proceed to consider the case and, as soon as practicable, shall render a decision. In any case, the decision must be rendered within sixty (60) days after the hearing. The decision shall contain:

(a) The findings of fact made by the trial examiner or trial committee;

(b) Conclusions of law reached by the trial examiner or trial committee; and

(c) The order based upon these findings of fact and conclusions of law.

SOURCES: Codes, 1942, § 7129-121; Laws, 1972, ch. 523, § 21; reenacted, Laws, 1983, ch. 486, § 16; reenacted, Laws, 1991, ch. 351, § 16; reenacted, Laws, 1992, ch. 438, § 16; reenacted, Laws, 1995, ch. 503, § 16; reenacted without change, Laws, 2000, ch. 484, § 16; brought forward without change, Laws, 2005, ch. 460, § 16, eff from and after June 30, 2005.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 37 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41 et seq.

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-14-39. Appeal.

(1) From any revocation, the person charged may, within thirty (30) days thereof, appeal to the chancery court of the county of the residence of the licensee.

(2) Notice of appeals shall be filed in the office of the clerk of the court, who shall issue a writ of certiorari directed to the board, commanding it within ten (10) days after service thereof to certify to such court its entire record in the matter in which the appeal has been taken. The appeal shall thereupon be heard in the due course by said court without a jury, and the court shall review the record and make its determination of the cause between the parties.

(3) Any order, rule or decision of the board shall not take effect until after the time of appeal in the said court shall have expired. If there is an appeal, such appeal may, in the discretion of and on motion to the chancery court, act as a supersedeas. The chancery court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may, in the discretion of the chancellor, be tried in vacation.

(4) Any person taking an appeal shall post a satisfactory bond in the amount of Two Hundred Dollars ($200.00) for payment of any costs which may be adjudged against him.

(5) Actions taken by the board in suspending a certificate of registration when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a suspension of a certificate that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SOURCES: Codes, 1942, § 7129-122; Laws, 1972, ch. 523, § 22; reenacted, Laws, 1983, ch. 486, § 17; Laws, 1991, ch. 351, § 17; reenacted, Laws, 1992, ch. 438, § 17; reenacted, Laws, 1995, ch. 503, § 17; Laws, 1996, ch. 507, § 41;

reenacted without change, Laws, 2000, ch. 484, § 17; brought forward without change, Laws, 2005, ch. 460, § 17, eff from and after June 30, 2005.

Cross References — Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 48.

§ 73-14-41. Prohibited acts.

No person may:

(a) Sell, barter or offer to sell or barter a license.

(b) Purchase or procure by barter a license with intent to use it as evidence of the holder's qualifications to practice the fitting and dispensing of hearing aids.

(c) Alter materially a license with fraudulent intent.

(d) Use or attempt to use as a valid license one which has been purchased, fraudulently obtained, counterfeited or materially altered.

(e) Willfully make a false material statement in an application for registration or for renewal of a license.

SOURCES: Codes, 1942, § 7129-115; Laws, 1972, ch. 523, § 15; reenacted, Laws, 1983, ch. 486, § 18; reenacted, Laws, 1991, ch. 351, § 18; Laws, 1992, ch. 438, § 18; reenacted, Laws, 1995, ch. 503, § 18; reenacted without change, Laws, 2000, ch. 484, § 18; brought forward without change, Laws, 2005, ch. 460, § 18, eff from and after June 30, 2005.

Cross References — Penalties, see § 73-14-43.
Enforcement, see § 73-14-45.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 42 et seq.
CJS. 53 C.J.S., Licenses §§ 125 et seq.

§ 73-14-43. Penalties.

Violation of any provision of this chapter is a misdemeanor punishable upon conviction by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for not more than ninety (90) days in the county jail, or by both.

SOURCES: Codes, 1942, § 7129-120; Laws, 1972, ch. 523, § 20; reenacted, Laws, 1983, ch. 486, § 19; reenacted, Laws, 1991, ch. 351, § 19; reenacted, Laws, 1992, ch. 438, § 19; reenacted, Laws, 1995, ch. 503, § 19; reenacted without change, Laws, 2000, ch. 484, § 19; brought forward without change, Laws, 2005, ch. 460, § 19, eff from and after June 30, 2005.

Cross References — Grounds for revocation or suspension of license, see § 73-14-35.

Prohibited acts, see § 73-14-41.

Enforcement, see § 73-14-45.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 73-14-45. Enforcement.

The board may enforce any provisions of this chapter by injunction or by any other appropriate proceeding. No such proceeding shall be barred by any proceeding had or pending pursuant to any other section of this chapter, and the authority conferred in this chapter is in addition to and supplementary to any other statute, civil or criminal, dealing with the subject matters herein and the institution and prosecution of any action shall not preclude the institution and prosecution under other appropriate civil or criminal statutes dealing therewith.

SOURCES: Codes, 1942, § 7129-120; Laws, 1972, ch. 523, § 20; reenacted, Laws, 1983, ch. 486, § 20; reenacted, Laws, 1991, ch. 351, § 20; reenacted, Laws, 1992, ch. 438, § 20; reenacted, Laws, 1995, ch. 503, § 20; reenacted without change, Laws, 2000, ch. 484, § 20; brought forward without change, Laws, 2005, ch. 460, § 20, eff from and after June 30, 2005.

Cross References — Grounds for revocation or suspension of license, see § 73-14-35.

Revocation proceedings, see § 73-14-37.

Appeal, see § 73-14-39.

Prohibited acts, see § 73-14-41.

Penalties, see § 73-14-43.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 42 et seq.

CJS. 53 C.J.S., Licenses §§ 121-132.

§ 73-14-47. Disposition of fees.

All fees and monies received by the board under this chapter shall be deposited in a special fund hereby created in the State Treasury and shall be used for the implementation and administration of this chapter when appropriated by the Legislature for such purpose.

SOURCES: Codes, 1942, § 7129-117; Laws, 1972, ch. 523, § 17; reenacted, Laws, 1983, ch. 486, § 21; Laws, 1983, ch. 522, § 44; reenacted, Laws, 1991, ch. 351, § 21; reenacted, Laws, 1992, ch. 438, § 21; reenacted, Laws, 1995, ch. 503, § 21; reenacted without change, Laws, 2000, ch. 484, § 21; brought forward without change, Laws, 2005, ch. 460, § 21, eff from and after June 30, 2005.

Cross References — Requirement that state officials pay over collections to state treasury, see § 7-9-21.

§ 73-14-49. Repealed.

Repealed by Laws of 2005, ch. 460, § 22, effective from and after June 30, 2005.

[Laws, 1979, ch. 301, § 28; Laws, 1979, ch. 357, § 13; Laws, 1983, ch. 486, § 22; Laws, 1991, ch. 351, § 22; Laws, 1992, ch. 438, § 22; Laws, 1995, ch. 503, § 22; reenacted and amended, Laws, 2000, ch. 484, § 22, eff from and after June 30, 2000]

Editor's Note — Former § 73-14-49 provided an automatic repealer for §§ 73-14-1 through 73-14-47.

CHAPTER 15

Nurses

Article 1. Regulation of Practice of Nursing 73-15-1
Article 3. Hemodialysis Technicians 73-15-101
Article 5. Nurse Licensure Compact 73-15-201

ARTICLE 1.

REGULATION OF PRACTICE OF NURSING.

SEC.
73-15-1. Short title.
73-15-3. Purpose.
73-15-5. Definitions.
73-15-7. Exceptions.
73-15-9. Composition of board; appointment; term of office; vacancies and how filled; removal from office.
73-15-11. Organization of board; election of officers; regular and special meetings; quorum; examinations; compensation of members.
73-15-13. Fees; bond.
73-15-15. Qualifications of board members.
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73-15-18. Establishment of Office of Nursing Workforce.
73-15-19. Registered nurse.
73-15-20. Advanced practice registered nurses.
73-15-21. Licensed practical nurses.
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73-15-25. Approval of schools of practical nursing.
73-15-27. Renewal and reinstatement of licenses; placement of license on inactive status.
73-15-29. Grounds for denying, revoking, or suspending license; penalties for engaging in prohibited conduct [Paragraph (1)(n) repealed effective July 1, 2020].
73-15-31. Disciplinary proceedings.
73-15-33. Violations and penalties.
73-15-35. Injunctive relief.
73-15-37. Repealed.

§ 73-15-1. Short title.

This article shall be cited as the "Mississippi Nursing Practice Law."

SOURCES: Codes, 1942, § 8806-01; Laws, 1970, ch. 420, § 1; reenacted, Laws, 1983, ch. 485, § 1; reenacted, Laws, 1991, ch. 465, § 1, eff from and after July 1, 1991.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The word "chapter" was changed to "article." The Joint Committee ratified the correction at its June 26, 2007, meeting.

Cross References — Hemodialysis technicians, see § 73-15-101.

Physician assistants, see §§ 73-26-1 et seq.

§ 73-15-3. Purpose.

In order to safeguard life and health, any person practicing or offering to practice as a registered nurse or a licensed practical nurse in Mississippi for compensation shall hereafter be required to submit evidence of qualifications to practice and shall be licensed or hold the privilege to practice as hereinafter provided. It shall be unlawful for any person not licensed or holding the privilege to practice under the provisions of this article:

(a) To practice or offer to practice as a registered nurse or a licensed practical nurse;

(b) To use a sign, card or device to indicate that such person is a registered nurse or a licensed practical nurse.

Any person offering to practice nursing in Mississippi must be licensed or otherwise authorized to practice as provided in this article.

SOURCES: Codes, 1942, § 8806-02; Laws, 1970, ch. 420, § 2; Laws, 1981, ch. 449, § 1; reenacted, Laws, 1983, ch. 485, § 2; reenacted, Laws, 1991, ch. 465, § 2; Laws, 2000, ch. 482, § 3, eff from and after July 1, 2000.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The word "chapter" was be changed to "article" in the first and last paragraphs. The Joint Committee ratified the correction at its June 26, 2007, meeting.

Cross References — Practice of nursing defined, see § 73-15-5.

Injunctive relief under this article, see § 73-15-35.

Injunctions to restrain unlawful practice of profession, see § 73-51-1.

ATTORNEY GENERAL OPINIONS

A registered nurse may supervise nursing practice, however, Section 73-15-3, requires that any person offering to practice nursing in Mississippi must be licensed as a nurse. Davis, April 21, 1995, A.G. Op. #95-0231.

§ 73-15-5. Definitions.

(1) "Board" means the Mississippi Board of Nursing.

(2) The "practice of nursing" by a registered nurse means the performance for compensation of services which requires substantial knowledge of the biological, physical, behavioral, psychological and sociological sciences and of nursing theory as the basis for assessment, diagnosis, planning, intervention and evaluation in the promotion and maintenance of health; management of individuals' responses to illness, injury or infirmity; the restoration of optimum function; or the achievement of a dignified death. "Nursing practice" includes, but is not limited to, administration, teaching, counseling, delegation and supervision of nursing, and execution of the medical regimen, including the administration of medications and treatments prescribed by any licensed or legally authorized physician or dentist. The foregoing shall not be deemed to include acts of medical diagnosis or prescriptions of medical, therapeutic or

corrective measures, except as may be set forth by rules and regulations promulgated and implemented by the Mississippi Board of Nursing.

(3) "Clinical nurse specialist practice" by a certified clinical nurse specialist means the delivery of advanced practice nursing care to individuals or groups using advanced diagnostic and assessment skills to manage and improve the health status of individuals and families; diagnose human responses to actual or potential health problems; plan for health promotion, disease prevention, and therapeutic intervention in collaboration with the patient or client; implement therapeutic interventions based on the nurse specialist's area of expertise and within the scope of advanced nursing practice, including, but not limited to, direct patient care, counseling, teaching, collaboration with other licensed health care providers; and, coordination of health care as necessary and appropriate and evaluation of the effectiveness of care.

(4) "Advanced nursing practice" means, in addition to the practice of professional nursing, the performance of advanced-level nursing approved by the board which, by virtue of graduate education and experience are appropriately performed by an advanced practice registered nurse. The advanced practice registered nurse may diagnose, treat and manage medical conditions. This may include prescriptive authority as identified by the board. Advanced practice registered nurses must practice in a collaborative/consultative relationship with a physician or dentist with an unrestricted license to practice in the State of Mississippi and advanced nursing must be performed within the framework of a standing protocol or practice guidelines, as appropriate.

(5) The "practice of nursing" by a licensed practical nurse means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological and sociological sciences and of nursing procedures which do not require the substantial skill, judgment and knowledge required of a registered nurse. These services are performed under the direction of a registered nurse or a licensed physician or licensed dentist and utilize standardized procedures in the observation and care of the ill, injured and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by any licensed physician or licensed dentist authorized by state law to prescribe. On a selected basis, and within safe limits, the role of the licensed practical nurse shall be expanded by the board under its rule-making authority to more complex procedures and settings commensurate with additional preparation and experience.

(6) A "license" means an authorization to practice nursing as a registered nurse or a licensed practical nurse designated herein.

(7) A "registered nurse" is a person who is licensed or holds the privilege to practice under the provisions of this article and who practices nursing as defined herein. "RN" is the abbreviation for the title of Registered Nurse.

(8) A "licensed practical nurse" is a person who is licensed or holds the privilege to practice under this article and who practices practical nursing as defined herein. "LPN" is the abbreviation for the title of Licensed Practical Nurse.

(9) A "registered nurse in clinical practice" is one who functions in any health care delivery system which provides nursing services.

(10) A "clinical nurse specialist" is a person who is licensed or holds the privilege to practice under this article in this state to practice professional nursing and who in this state practices advanced nursing as defined herein. "CNS" is the abbreviation for the title of Clinical Nurse Specialist.

(11) An "advanced practice registered nurse" is a person who is licensed or holds the privilege to practice under this article and who is certified in advanced practice registered nurse or specialized nursing practice and includes certified registered nurse midwives, certified registered nurse anesthetists and certified nurse practitioners. "CNM" is the abbreviation for the title of Certified Nurse Midwife, "CRNA" is the abbreviation for the title of Certified Registered Nurse Anesthetist. "CNP" is the abbreviation for the title of Certified Nurse Practitioner.

(12) A "nurse educator" is a registered nurse who meets the criteria for faculty as set forth in a state-accredited program of nursing for registered nurses, or a state-approved program of nursing for licensed practical nurses, and who functions as a faculty member.

(13) A "consumer representative" is a person representing the interests of the general public, who may use services of a health agency or health professional organization or its members but who is neither a provider of health services, nor employed in the health services field, nor holds a vested interest in the provision of health services at any level, nor has an immediate family member who holds vested interests in the provision of health services at any level.

(14) "Privilege to practice" means the multistate licensure privilege to practice nursing in the state as described in the Nurse Licensure Compact provided for in Section 73-15-201.

(15) "Licensee" is a person who has been issued a license to practice nursing in the state or who holds the privilege to practice nursing in the state.

SOURCES: Codes, 1942, § 8806-03; Laws, 1970, ch. 420, § 3; Laws, 1974, ch. 354; Laws, 1976, ch. 356, § 1; Laws, 1977, ch. 349; Laws, 1981, ch. 449, § 2; reenacted, Laws, 1983, ch. 485, § 3; reenacted, Laws, 1991, ch. 465, § 3; Laws, 2000, ch. 482, § 4; Laws, 2009, ch. 474, § 1; Laws, 2010, ch. 315, § 1; Laws, 2017, ch. 359, § 3, eff from and after July 20, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The word "chapter" was changed to "article" in subsections (5) and (6). The Joint Committee ratified the correction at its June 26, 2007, meeting.

Editor's Note — Laws of 2017, ch. 359, §§ 6 and 7 provide:

"SECTION 6. The provisions of this act shall not take effect until a substantially similar act is enacted by at least twenty-six (26) states or on December 31, 2018, whichever occurs first, in accordance with Article X of the Nurse Licensure Compact, as enacted by Section 1 of this act [codified as Section 73-15-201]. If twenty-six (26) states enact a substantially similar act before December 31, 2018, the Mississippi Board of Nursing shall notify the House and Senate Legislative Services Offices within five (5) days after the 26th state has enacted the act.

"SECTION 7. This act shall take effect and be in force from and after July 1, 2017, subject to the provisions of Section 6 of this act."

On July 20, 2017, North Carolina became the 26th member state to sign legislation enacting the compact, making the effective date of Laws of 2017, Chapter 359, July 20, 2017.

Amendment Notes — The 2017 amendment, effective July 20, 2017, substituted "An advanced practice" for "An advance practice" at the beginning of (11); and in (14), substituted "multistate licensure privilege to" for "authorization to" and "Section 73-15-201" for "Section 73-15-22."

Cross References — Licensing of dentists, see §§ 73-9-1 et seq.

Licensing of physicians, see §§ 73-25-1 et seq.

Reimbursement to insureds or their beneficiaries for work performed by a duly certified nurse practitioner, see § 83-41-213.

JUDICIAL DECISIONS

1. Relationship to other laws.

Miss. Code Ann. § 73-15-5(2) is very similar to Tenn. Code Ann. § 63-7-103(b), on which the Tennessee Court of Appeals relied in Richberger v. West Clinic, P.C., 152 S.W.3d 505 (Tenn. Ct. App. 2004), in which the court determined that a registered nurse is prohibited from making a medical diagnosis and therefore is not competent to offer opinions on medical causation in a medical malpractice action. Vaughn v. Miss. Baptist Med. Ctr., 20 So. 3d 645 (Miss. 2009).

ATTORNEY GENERAL OPINIONS

Any rules or regulations that impact the practice of nurse practitioners are to be jointly promulgated by the Mississippi Board of Nursing and the State Board of Medical Licensure. Perkins, Mar. 31, 2003, A.G. Op. #03-0060.

RESEARCH REFERENCES

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 1-4, 165-170, 172-174, 178, 179.

§ 73-15-7. Exceptions.

The following shall be excepted from the provisions of this article:

(a) Gratuitous nursing by friends and members of the family.

(b) The furnishing of nursing assistance in an emergency.

(c) The practice of nursing which is incidental to a program of study by a student enrolled in an approved educational program of nursing, provided the practice is under the supervision of a registered nurse.

(d) The practice of nursing by a graduate of an approved educational program of nursing pending the results of the first licensing examination scheduled by the board following such graduation, provided the practice is under the supervision of a registered nurse or a licensed physician if the nurse is practicing in a physician's office and the graduate holds a temporary permit to practice nursing in Mississippi.

(e) The practice of nursing by any legally qualified nurse of another state who is employed by the United States Government or any bureau, division or agency thereof while in the discharge of his or her official duties.

(f) The practice of nursing by a registered nurse or a licensed practical nurse for a period of not more than ninety (90) days pending licensure in Mississippi, provided the nurse upon employment has furnished the employer with satisfactory evidence of current registration and licensure in another state, and provided such nurse furnishes evidence to the prospective employer of having submitted proper application and fees to the board prior to employment and holds a temporary permit to practice nursing in Mississippi.

(g) The furnishing of nursing assistance by any duly qualified auxiliary personnel employed by state mental health facilities until December 31, 1983.

(h) Any registered nurse or licensed practical nurse for nursing duties performed in a physician's office under the direction and supervision of a licensed physician; provided, however, that said registered nurse or licensed practical nurse shall otherwise comply with the other provisions of this article.

(i) The infliction of the punishment of death pursuant to Section 99-19-51.

SOURCES: Codes, 1942, § 8806-04; Laws, 1970, ch. 420, § 4; Laws, 1981, ch. 449, § 3; reenacted, Laws, 1983, ch. 485, § 4; Laws, 1984, ch. 448, § 9; reenacted, Laws, 1991, ch. 465, § 4, eff from and after July 1, 1991.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The word "chapter" was changed to "article" in the first paragraph and in subsection (h). The Joint Committee ratified the correction at its June 26, 2007, meeting.

Cross References — Infliction of death sentence not construed as practice of nursing, see § 99-19-53.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, and Surgeons, and Other Healers § 45.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers § 13.

§ 73-15-9. Composition of board; appointment; term of office; vacancies and how filled; removal from office.

(1) There is hereby created a board to be known as the Mississippi Board of Nursing, composed of thirteen (13) members, two (2) of whom shall be nurse educators; three (3) of whom shall be registered nurses in clinical practice, two (2) to have as basic nursing preparation an associate degree or diploma and one (1) to have as basic nursing preparation a baccalaureate degree; one (1) of whom shall be a registered nurse at large; one (1) of whom shall be a registered nurse practitioner; four (4) of whom shall be licensed practical nurses; one (1)

of whom shall be a licensed physician who shall always be a member of the State Board of Medical Licensure; and one (1) of whom shall represent consumers of health services. There shall be at least one (1) board member from each congressional district in the state; provided, however, that the physician member, the consumer representative member and one (1) registered nurse member shall be at large always.

(2) Members of the Mississippi Board of Nursing, excepting the member of the State Board of Medical Licensure, shall be appointed by the Governor, with the advice and consent of the Senate, from lists of nominees submitted by any Mississippi registered nurse organization and/or association chartered by the State of Mississippi whose board of directors is elected by the membership and whose membership includes registered nurses statewide, for the nomination of registered nurses, and by the Mississippi Federation of Licensed Practical Nurses and the Mississippi Licensed Practical Nurses' Association for the nomination of a licensed practical nurse. Nominations submitted by any such registered nurse organization or association to fill vacancies on the board shall be made and voted on by registered nurses only. Each list of nominees shall contain a minimum of three (3) names for each vacancy to be filled. The list of names shall be submitted at least thirty (30) days before the expiration of the term for each position. If such list is not submitted, the Governor is authorized to make an appointment from the group affected and without nominations. Appointments made to fill vacancies for unexpired terms shall be for the duration of such terms and until a successor is duly appointed.

(3) Members of the board shall be appointed in staggered terms for four (4) years or until a successor shall be duly qualified. No member may serve more than two (2) consecutive full terms. Members of the board serving on July 1, 1988, shall continue to serve for their appointed terms.

(4) Vacancies occurring by reason of resignation, death or otherwise shall be filled by appointment of the Governor upon nominations from a list of nominees from the affected group to be submitted within not more than thirty (30) days after such a vacancy occurs. In the absence of such list, the Governor is authorized to fill such vacancy in accordance with the provisions for making full-term appointments. All vacancy appointments shall be for the unexpired terms.

(5) Any member may be removed from the board by the Governor after a hearing by the board and provided such removal is recommended by the executive committee of the affected group.

SOURCES: Codes, 1942, § 8806-05; Laws, 1970, ch. 420, § 5; Laws, 1976, ch. 356, § 2; Laws, 1981, ch. 449, § 4; reenacted, Laws, 1983, ch. 485, § 5; Laws, 1988, ch. 469, § 1; reenacted, Laws, 1991, ch. 465, § 5, eff from and after July 1, 1991.

Cross References — General powers and duties of governor, see § 7-1-5.
Executive officer of state board of health, see § 41-3-5.1.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 22, 23.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers § 30-39.

§ 73-15-11. Organization of board; election of officers; regular and special meetings; quorum; examinations; compensation of members.

(1) The members of the Mississippi Board of Nursing shall meet annually and organize for the ensuing year by election of one (1) of its members as president, one (1) as secretary, and one (1) as treasurer. The physician member and the representative of consumers of health services may discuss and nominate but shall not vote for officers nor hold office in such elections.

(2) The board shall meet at least once every four (4) months for the purpose of transacting such business as may come before the board. Any member who shall not attend two (2) consecutive meetings of the board shall be subject to removal by the Governor. The president of the board shall notify the Governor in writing when any such member has failed to attend two (2) consecutive regular meetings.

(3) Special meetings of the board may be held on call of the president or upon call of any seven (7) members. A written notice of time, place and purpose of any special meeting shall be mailed by the executive director to all members of the board not less than ten (10) days before the meeting is held.

(4) On all matters the board shall function as a board of thirteen (13) members, and seven (7) members, including at least three (3) registered nurses and two (2) practical nurses, shall constitute a quorum. In any case, the affirmative vote of a majority of the members present and participating shall be necessary to take action. In all cases pertaining to practical nursing, such majority must include the affirmative vote of at least one (1) of the practical nurse members of the board.

(5) The board shall hold not less than two (2) examinations each year for registered nurses and not less than two (2) each year for licensed practical nurses, at such times and places as the board may determine.

(6) Each member of the board shall receive a per diem compensation as provided in Section 25-3-69 for attendance at board meetings, together with necessary travel and other expenses incurred in the discharge of his or her duties as a board member.

SOURCES: Codes, 1942, § 8806-06; Laws, 1970, ch. 420, § 6; Laws, 1976, ch. 356, § 3; Laws, 1981, ch. 449, § 5; Laws, 1983, ch. 485, § 6; Laws, 1988, ch. 469, § 2; reenacted, Laws, 1991, ch. 465, § 6, eff from and after July 1, 1991.

§ 73-15-13. Fees; bond.

(1) All fees from examination, registration and licensure of nurses as provided for hereafter, and all monies coming into possession of the board from any source whatsoever, shall be paid to the treasurer who shall issue receipts therefor and the same shall be deposited in the state treasury to the credit of the board.

(2) The funds collected by this board shall be expended only pursuant to appropriation approved by the legislature and as provided by law.

(3) The treasurer and executive director shall execute surety bonds in a sum to be determined by the board, conditioned upon the faithful performance of their duties and upon their accounting for all monies coming into their hands. The premium for the bond shall be paid by the board funds. Funds shall not be withdrawn or expended except upon approval of the board.

SOURCES: Codes, 1942, § 8806-07; Laws, 1970, ch. 420, § 7; Laws, 1981, ch. 449, § 6; reenacted, Laws, 1983, ch. 485, § 7; Laws, 1984, ch. 488, § 276; reenacted, Laws, 1991, ch. 465, § 7, eff from and after July 1, 1991.

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

§ 73-15-15. Qualifications of board members.

(1) Each board member shall be a citizen of the United States, a resident of the State of Mississippi, and shall before entering upon duties of said office take the oath prescribed by Section 268 of the Constitution of the State of Mississippi and file same with the office of the secretary of state who shall thereupon issue such person so appointed a certificate of appointment.

(2) Each registered nurse board member shall possess these additional qualifications:

(a) Education-graduation from an approved educational program for the preparation of registered nurses;

(b) Experience-have at least five (5) years of nursing experience since graduation;

(c) Employment-have been employed for at least the past three (3) years as a registered nurse in Mississippi;

(d) Licensure-be currently registered to practice as a registered nurse in the State of Mississippi.

(3) Each licensed practical nurse board member shall possess these additional qualifications:

(a) Education-graduation from an approved educational program for the preparation of licensed practical nurses;

(b) Experience-have at least five (5) years of nursing experience since graduation;

(c) Employment-have been employed for at least the past three (3) years as a licensed practical nurse in Mississippi;

(d) Licensure-be currently registered to practice as a licensed practical nurse in the State of Mississippi.

(4) The physician member shall be a physician licensed to practice in the State of Mississippi and a member of the state board of medical licensure.

SOURCES: Codes, 1942, § 8806-08; Laws, 1970, ch. 420, § 8; Laws, 1981, ch. 449, § 7; reenacted, Laws, 1983, ch. 485, § 8; reenacted, Laws, 1991, ch. 465, § 8, eff from and after July 1, 1991.

§ 73-15-17. Duties of board.

The Mississippi Board of Nursing is authorized and empowered to:

(a) Adopt and from time to time revise such rules and regulations consistent with the law as shall be necessary to govern its proceedings and carry into effect the provisions of this article; however, the board shall not adopt any rule or regulation or impose any requirement regarding the licensing or certification of advanced practice registered nurses that conflicts with the prohibitions in Section 73-49-3.

(b) Require the secretary to keep records of all meetings of the board and keep a record of all proceedings, and to prepare a register of registered nurses and a register of licensed practical nurses, all nurses appearing thereon to be duly licensed under this article, and which registers shall be open for public inspection at all reasonable times.

(c) Issue subpoenas, require attendance of witnesses, and administer oaths of persons giving testimony.

(d) Cause the prosecution of all persons violating the provisions of this article, and incur such necessary expenses therefor.

(e) Conduct hearings upon charges calling for discipline of a licensee or revocation of a license or of the privilege to practice.

(f) Present a true and full report to the Governor and the Legislature, together with a statement of receipts and disbursements on or before February 1 of each year.

(g) Maintain an office in the greater Jackson area for the administration of this article.

(h) File an annual list of all certificates of registration issued by the board with the Secretary of State's office for both registered nurses and licensed practical nurses.

(i) File an annual list of all certificates of registration issued by the board to registered nurses, including addresses of the persons with the Mississippi Nurses' Association; and file a similar list of all certificates of registration issued to licensed practical nurses, including addresses of the persons, with the Mississippi Federation of Licensed Practical Nurses and the Mississippi Licensed Practical Nurses Association.

(j) Adopt a seal which shall be in the form of a circle with the image of an eagle in the center, and around the margin the words "Mississippi Board of Nursing," and under the image of the eagle the word "Official." The seal shall be affixed to certificates and warrants issued by the board, and to all records sent up on appeal from its decisions.

(k) Schedule dates and locations for state board examinations for examining qualified applicants for licensure.

(*l*) Examine, license and renew licenses of duly qualified applicants.

(m) Appoint and employ a qualified person who shall not be a member of the board to serve as executive director, define the duties, fix the compensation, and delegate to him or her those activities that will expedite the functions of the board. The executive director shall meet all the qualifications for board members, and shall in addition:

(i) Have had at least a master's degree in nursing, eight (8) years' experience as a registered nurse, five (5) of which shall be in teaching or in administration, or a combination thereof; and

(ii) Have been actively engaged in nursing for at least five (5) years immediately preceding appointment.

(n) Employ, discharge, define duties, and fix compensation of such other persons as may be necessary to carry out the provisions of this article.

(o) Secure the services of research consultants as deemed necessary who shall receive a per diem, travel and other necessary expenses incurred while engaged by the board.

(p) Enter into contracts with any other state or federal agency or with any private person, organization or group capable of contracting, if it finds such action to be in the public interest and in the furtherance of its responsibilities.

(q) Upon reasonable suspicion that a holder of a license issued under this article has violated any statutory ground for denial of licensure as set forth in Section 73-15-29 or is guilty of any offense specified in Section 73-15-33, require the license holder to undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database, in the same manner as required for applicants for licensure under Sections 73-15-19(1) and 73-15-21(1).

(r) Perform the duties prescribed by the Nurse Licensure Compact in Section 73-15-201.

SOURCES: Codes, 1942, § 8806-09; Laws, 1970, ch. 420, § 9; Laws, 1981, ch. 449, § 8; reenacted, Laws, 1983, ch. 485, § 9; reenacted, Laws, 1991, ch. 465, § 9; Laws, 1993, ch. 398, § 1; Laws, 1993, ch. 427, § 1; Laws, 2000, ch. 482, § 5; Laws, 2006, ch. 343, § 1; Laws, 2010, ch. 464, § 3; Laws, 2015, ch. 461, § 4; Laws, 2017, ch. 359, § 4, eff from and after July 20, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The word "chapter" was changed to "article" in paragraphs (a), (b), (d), (g) and (n). The Joint Committee ratified the correction at its June 26, 2007, meeting.

Editor's Note — Laws of 2017, ch. 359, §§ 6 and 7 provide:

"SECTION 6. The provisions of this act shall not take effect until a substantially similar act is enacted by at least twenty-six (26) states or on December 31, 2018, whichever occurs first, in accordance with Article X of the Nurse Licensure Compact, as enacted by Section 1 of this act [codified as Section 73-15-201]. If twenty-six (26) states enact a substantially similar act before December 31, 2018, the Mississippi Board of Nursing shall notify the House and Senate Legislative Services Offices within five (5) days after the 26th state has enacted the act.

"SECTION 7. This act shall take effect and be in force from and after July 1, 2017, subject to the provisions of Section 6 of this act."

On July 20, 2017, North Carolina became the 26th member state to sign legislation enacting the compact, making the effective date of Laws of 2017, Chapter 359, July 20, 2017.

Amendment Notes — The 2017 amendment, effective July 20, 2017, added (r); and made a minor stylistic change.

Cross References — Board to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health care providers, see § 41-34-3.

Requirement that Board establish procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

Powers of Board of Nursing relating to hemadialysis technician certification program, see § 73-15-101.

JUDICIAL DECISIONS

1. In general.

Grandfather clause promulgated by Mississippi Board of Nursing for certification of nurse anesthetist which allows certification of nurse anesthetist without examination only for limited period of time while allowing registered nurses to become licensed at any time upon payment of fee denies nurse anesthetist equal protection. Mississippi Bd. of Nursing v. Belk, 481 So. 2d 826 (Miss. 1985).

ATTORNEY GENERAL OPINIONS

In order to give meaning to the conflicting statutory provisions, the nursing board and the state personnel board have roles in setting the salary of the executive director. Since Section 73-15-17(m) is specific to the nursing board and Section 25-9-107(c) is a general statute, the nursing board sets the salary of its executive director within a salary range established by the state personnel board in accordance with the variable compensation plan. Owens, Aug. 11, 2006, A.G. Op. 06-0361.

The Mississippi State Board of Physical Therapy must elect board members to the positions of chairman, secretary, and treasurer. All requisitions must be signed by the treasurer, and that duty may not be delegated to any other person. Boyette, March 2, 2007, A.G. Op. #07-00089, 2007 Miss. AG LEXIS 84.

RESEARCH REFERENCES

ALR. Wrongful discharge based on public policy derived from professional ethics codes. 52 A.L.R.5th 405.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers § 22, 23.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers § 30-39.

§ 73-15-18. Establishment of Office of Nursing Workforce.

(1) The Mississippi Board of Nursing is designated as the state agency responsible for the administration and supervision of the Nursing Workforce Program as an educational curriculum in the State of Mississippi. It is the intent of the Legislature to develop a nursing workforce able to carry out the scope of service and leadership tasks required of the profession by promoting a strong educational infrastructure between nursing practice and nursing education.

(2) The Mississippi Board of Nursing is authorized to establish an Office of Nursing Workforce within the administrative framework of the board for the purpose of providing coordination and consultation to nursing education and practice. The Nursing Workforce Program shall encompass five (5) interdependent components:

(a) Develop and facilitate implementation of a state educational program directed toward nursing educators regarding health care delivery system changes and the impact these changes will have on curriculum and on the service needs of nurses.

(b) Determine the continuing education needs of the nursing workforce and facilitate such continuing education coursework through the university/college schools of nursing in the state and the community/junior college nursing programs in the state.

(c) Promote and coordinate through the schools of nursing opportunities for nurses prepared at the associate degree and bachelor degree levels to obtain higher degrees.

(d) Apply for and administer grants from public and private sources for the development of the Nursing Workforce Program prescribed in this section.

(e) Establish systems to ensure an adequate supply of nurses to meet the health care needs of the citizens of Mississippi. This will include, but is not limited to, gathering and quantifying dependable data on current nursing workforce capacities and forecasting future requirements. The Office of Nursing Workforce will report its findings annually to the Mississippi Legislature.

(3) Pursuant to the provisions of subsections (1) and (2), the Board of Nursing is authorized to provide for the services of an Office of Nursing Workforce Director and such other professional and nonprofessional staff as may be needed and as funds are available to the Board of Nursing to implement the Nursing Workforce Program prescribed in this section. It shall be the responsibility of such professional staff to coordinate efforts of the bachelor degree schools of nursing, the associate degree schools of nursing and other appropriate agencies in the State of Mississippi to implement the Nursing Workforce Program.

(4) The Board of Nursing shall appoint a Nursing Workforce Advisory Committee composed of health care professionals, health agency administrators, nursing educators and other appropriate individuals to provide technical

advice to the Office of Nursing Workforce created in this section. The members of the committee shall be appointed by the Board of Nursing from a list of nominees submitted by appropriate nursing and health care organizations in the State of Mississippi. The members of the committee shall receive no compensation for their services, but may be reimbursed for actual travel expenses and mileage authorized by law for necessary committee business.

(5) All funds made available to the Board of Nursing for the purpose of nursing workforce shall be administered by the board office for that purpose. The Board of Nursing is authorized to enter into contract with any private person, organization or entity capable of contracting for the purpose of administering this section.

(6) The Nursing Workforce Program and the Office of Nursing Workforce provided for in this section will be established and implemented only if sufficient funds are appropriated to or otherwise available to the Board of Nursing for that purpose.

SOURCES: Laws, 1996, ch. 364, § 1; Laws, 2001, ch. 386, § 1; Laws, 2006, ch. 343, § 2, eff from and after July 1, 2006.

Editor's Note — Laws of 1996, ch 364, § 2, provides as follows:

"SECTION 2. All new programs authorized in this act are subject to the availability of funds specifically appropriated therefor by the Legislature."

§ 73-15-19. Registered nurse.

(1) **Registered nurse applicant qualifications.** Any applicant for a license to practice as a registered nurse shall submit to the board:

(a) An attested written application on a Board of Nursing form;

(b) Written official evidence of completion of a nursing program approved by the Board of Trustees of State Institutions of Higher Learning, or one approved by a legal accrediting agency of another state, territory or possession of the United States, the District of Columbia, or a foreign country which is satisfactory to this board;

(c) Evidence of competence in English related to nursing, provided the first language is not English;

(d) Any other official records required by the board.

In addition to the requirements specified in paragraphs (a) through (d) of this subsection, in order to qualify for a license to practice as a registered nurse, an applicant must have successfully been cleared for licensure through an investigation that shall consist of a determination as to good moral character and verification that the prospective licensee is not guilty of or in violation of any statutory ground for denial of licensure as set forth in Section 73-15-29 or guilty of any offense specified in Section 73-15-33. To assist the board in conducting its licensure investigation, all applicants shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of his or her fingerprints in a form and manner prescribed by the board, which shall be forwarded to the

Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose.

Any and all state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

The board shall provide to the department the fingerprints of the applicant, any additional information that may be required by the department, and a form signed by the applicant consenting to the check of the criminal records and to the use of the fingerprints and other identifying information required by the state or national repositories.

The board shall charge and collect from the applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant.

The board may, in its discretion, refuse to accept the application of any person who has been convicted of a criminal offense under any provision of Title 97 of the Mississippi Code of 1972, as now or hereafter amended, or any provision of this article.

(2) **Licensure by examination.**

(a) Upon the board being satisfied that an applicant for a license as a registered nurse has met the qualifications set forth in subsection (1) of this section, the board shall proceed to examine such applicant in such subjects as the board shall, in its discretion, determine. The subjects in which applicants shall be examined shall be in conformity with curricula in schools of nursing approved by the Board of Trustees of State Institutions of Higher Learning, or one approved by a legal accrediting agency of another state, territory or possession of the United States, the District of Columbia, or a foreign country which is satisfactory to the board.

(b) The applicant shall be required to pass the written examination as selected by the board.

(c) Upon successful completion of such examination, the board shall issue to the applicant a license to practice as a registered nurse.

(d) The board may use any part or all of the state board test pool examination for registered nurse licensure, its successor examination, or any other nationally standardized examination identified by the board in its rules. The passing score shall be established by the board in its rules.

(3) **Licensure by endorsement.** The board may issue a license to practice nursing as a registered nurse without examination to an applicant who has been duly licensed as a registered nurse under the laws of another

state, territory or possession of the United States, the District of Columbia, or a foreign country if, in the opinion of the board, the applicant meets the qualifications required of licensed registered nurses in this state and has previously achieved the passing score or scores on the licensing examination required by this state, at the time of his or her graduation. The issuance of a license by endorsement to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(4) **Requirements for rewriting the examination.** The board shall establish in its rules the requirements for rewriting the examination for those persons failing the examination on the first writing or subsequent rewriting.

(5) **Fee.** The applicant applying for a license by examination or by endorsement to practice as a registered nurse shall pay a fee not to exceed One Hundred Dollars ($100.00) to the board.

(6) **Temporary permit.**

(a) The board may issue a temporary permit to practice nursing to a graduate of an approved school of nursing pending the results of the examination in Mississippi, and to a qualified applicant from another state, territory or possession of the United States, or District of Columbia, or pending licensure procedures as provided for elsewhere in this article. The fee shall not exceed Twenty-five Dollars ($25.00).

(b) The board may issue a temporary permit for a period of ninety (90) days to a registered nurse who is currently licensed in another state, territory or possession of the United States or the District of Columbia and who is an applicant for licensure by endorsement. Such permit is not renewable except by board action. The issuance of a temporary permit to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(c) The board may issue a temporary permit to a graduate of an approved school of nursing pending the results of the first licensing examination scheduled after application. Such permit is not renewable except by board action.

(d) The board may issue a temporary permit for a period of thirty (30) days to any registered nurse during the time enrolled in a nursing reorientation program. This time period may be extended by board action. The fee shall not exceed Twenty-five Dollars ($25.00).

(e) The board may adopt such regulations as are necessary to limit the practice of persons to whom temporary permits are issued.

(7) **Temporary license.** The board may issue a temporary license to practice nursing at a youth camp licensed by the State Board of Health to nonresident registered nurses and retired resident registered nurses under the provisions of Section 75-74-8.

(8) **Title and abbreviation.** Any person who holds a license or holds the privilege to practice as a registered nurse in this state shall have the right to use the title “registered nurse” and the abbreviation “R.N.” No other person shall assume such title or use such abbreviation, or any words, letters, signs or devices to indicate that the person using the same is a registered nurse.

(9) **Registered nurses licensed under a previous law.** Any person holding a license to practice nursing as a registered nurse issued by this board which is valid on July 1, 1981, shall thereafter be deemed to be licensed as a registered nurse under the provisions of this article upon payment of the fee provided in Section 73-15-27.

(10) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Codes, 1942, § 8806-10; Laws, 1970, ch. 420, § 10; Laws, 1976, ch. 356, § 4; Laws, 1977, ch. 353, § 1; Laws, 1981, ch. 428, § 2; Laws, 1981, ch. 449, § 9; Laws, 1983, ch. 485, § 10; reenacted, Laws, 1991, ch. 465, § 10; Laws, 1997, ch. 588, § 42; Laws, 2000, ch. 482, § 6; Laws, 2010, ch. 464, § 1; Laws, 2013, ch. 350, § 16, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The word "chapter" was changed to "article" in the last paragraph of subsection (1), at the end of the first sentence in subsection (6)(a) and near the end of subsection (9). The Joint Committee ratified the correction at its June 26, 2007, meeting.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Nursing schools, see §§ 37-129-1 et seq.

Nurse Licensure Compact, see § 73-15-201.

Provisions of the Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

Comparable Laws from other States — Alabama: Code of Ala. § 34-21-21.

Arkansas: A.C.A. § 17-87-301.

Georgia: O.C.G.A. § 43-26-7.

Louisiana: La. R.S. § 37:920.

North Carolina: N.C. Gen. Stat. § 90-171.32.

South Carolina: S.C. Code Ann. § 40-33-36.

Tennessee: Tenn. Code Ann. § 63-7-105.

Texas: Tex. Occ. Code § 301.260.

Virginia: Va. Code Ann. § 54.1-3018.

West Virginia: W. Va. Code § 30-7-6.

JUDICIAL DECISIONS

1. In general.

Refusal of Board of Nursing to allow nurse anesthetist additional time to complete documentation required for certification under grandfather clause is arbitrary, unreasonable, and capricious where nurse has tendered letter, signed by 11 doctors, which attest to nurse's competence. Mississippi Bd. of Nursing v. Belk, 481 So. 2d 826 (Miss. 1985).

Grandfather clause promulgated by Mississippi Board of Nursing for certification of nurse anesthetist which allows certification of nurse anesthetist without examination only for limited period of time while allowing registered nurses to become licensed at any time upon payment of fee denies nurse anesthetist equal protection. Mississippi Bd. of Nursing v. Belk, 481 So. 2d 826 (Miss. 1985).

RESEARCH REFERENCES

ALR. Requirement that employees speak English in workplace as discrimination in employment under Title VII of Civil Rights Act of 1964 (42 USCS §§ 2000e et seq). 90 A.L.R. Fed. 806.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers § 45.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 24-29.

§ 73-15-20. Advanced practice registered nurses.

(1) **Advanced practice registered nurses.** Any nurse desiring to be certified as an advanced practice registered nurse shall apply to the board and submit proof that he or she holds a current license to practice professional nursing and that he or she meets one or more of the following requirements:

(a) Satisfactory completion of a formal post-basic educational program of at least one (1) academic year, the primary purpose of which is to prepare nurses for advanced or specialized practice.

(b) Certification by a board-approved certifying body. Such certification shall be required for initial state certification and any recertification as a registered nurse anesthetist, nurse practitioner or nurse midwife. The board may by rule provide for provisional or temporary state certification of graduate nurse practitioners for a period of time determined to be appropriate for preparing and passing the National Certification Examination. Those with provisional or temporary certifications must practice under the direct supervision of a licensed physician or a certified nurse practitioner or certified nurse midwife with at least five (5) years of experience.

(c) Graduation from a program leading to a master's or post-master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills.

(2) **Rulemaking.** The board shall provide by rule the appropriate requirements for advanced practice registered nurses in the categories of certified registered nurse anesthetist, certified nurse midwife and advance practice registered nurse.

(3) **Collaboration.** An advanced practice registered nurse shall perform those functions authorized in this section within a collaborative/consultative relationship with a dentist or physician with an unrestricted license to practice dentistry or medicine in this state and within an established protocol or practice guidelines, as appropriate, that is filed with the board upon license application, license renewal, after entering into a new collaborative/consultative relationship or making changes to the protocol or practice guidelines or practice site. The board shall review and approve the protocol to ensure compliance with applicable regulatory standards. The advanced practice registered nurse may not practice as an APRN if there is no collaborative/consultative relationship with a physician or dentist and a board-approved protocol or practice guidelines.

(4) **Renewal.** The board shall renew a license for an advanced practice registered nurse upon receipt of the renewal application, fees and protocol or

practice guidelines. The board shall adopt rules establishing procedures for license renewals. The board shall by rule prescribe continuing education requirements for advanced practice nurses not to exceed forty (40) hours biennially as a condition for renewal of a license or certificate.

(5) **Reinstatement.** Advanced practice registered nurses may reinstate a lapsed privilege to practice upon submitting documentation of a current active license to practice professional nursing, a reinstatement application and fee, a protocol or practice guidelines, documentation of current certification as an advanced practice nurse in a designated area of practice by a national certification organization recognized by the board and documentation of at least forty (40) hours of continuing education related to the advanced clinical practice of the nurse practitioner within the previous two-year period. The board shall adopt rules establishing the procedure for reinstatement.

(6) **Changes in status.** The advanced practice registered nurse shall notify the board immediately regarding changes in the collaborative/consultative relationship with a licensed physician or dentist. If changes leave the advanced practice registered nurse without a board-approved collaborative/consultative relationship with a physician or dentist, the advanced practice nurse may not practice as an advanced practice registered nurse.

(7) **Practice requirements.** The advanced practice registered nurse shall practice:

(a) According to standards and guidelines of the National Certification Organization.

(b) In a collaborative/consultative relationship with a licensed physician whose practice is compatible with that of the nurse practitioner. Certified registered nurse anesthetists may collaborate/consult with licensed dentists. The advanced practice nurse must be able to communicate reliably with a collaborating/consulting physician or dentist while practicing.

(c) According to a board-approved protocol or practice guidelines.

(d) Advanced practice registered nurses practicing as nurse anesthetists must practice according to board-approved practice guidelines that address pre-anesthesia preparation and evaluation; anesthesia induction, maintenance, and emergence; post-anesthesia care; peri-anesthetic and clinical support functions.

(e) Advanced practice registered nurses practicing in other specialty areas must practice according to a board-approved protocol that has been mutually agreed upon by the nurse practitioner and a Mississippi licensed physician or dentist whose practice or prescriptive authority is not limited as a result of voluntary surrender or legal/regulatory order.

(f) Each collaborative/consultative relationship shall include and implement a formal quality assurance/quality improvement program which shall be maintained on site and shall be available for inspection by representatives of the board. This quality assurance/quality improvement program must be sufficient to provide a valid evaluation of the practice and be a valid basis for change, if any.

(g) Nurse practitioners may not write prescriptions for, dispense or order the use of or administration of any schedule of controlled substances except as contained in this chapter.

(8) **Prescribing controlled substances and medications.** Certified nurse midwives and certified nurse practitioners may apply for controlled substance prescriptive authority after completing a board-approved educational program. Certified nurse midwives and certified nurse practitioners who have completed the program and received prescription authority from the board may prescribe Schedules II-V. The words "administer," "controlled substances" and "ultimate user," shall have the same meaning as set forth in Section 41-29-105, unless the context otherwise requires. The board shall promulgate rules governing prescribing of controlled substances, including distribution, record keeping, drug maintenance, labeling and distribution requirements and prescription guidelines for controlled substances and all medications. Prescribing any controlled substance in violation of the rules promulgated by the board shall constitute a violation of Section 73-15-29(1)(f), (k) and (*l*) and shall be grounds for disciplinary action. The prescribing, administering or distributing of any legend drug or other medication in violation of the rules promulgated by the board shall constitute a violation of Section 73-15-29(1)(f), (k) and (*l*) and shall be grounds for disciplinary action.

SOURCES: Laws, 2009, ch. 474, § 2; Laws, 2010, ch. 315, § 2, eff from and after July 1, 2010.

Cross References — Controlled substances Schedules II through V, see §§ 41-29-115 through 41-29-121.

§ 73-15-21. Licensed practical nurses.

(1) **Licensed practical nurse applicant qualifications.** Any applicant for a license to practice practical nursing as a licensed practical nurse shall submit to the board:

(a) An attested written application on a Board of Nursing form;

(b) A diploma from an approved high school or the equivalent thereof, as determined by the appropriate educational agency;

(c) Written official evidence of completion of a practical nursing program approved by the State Department of Education through its Division of Vocational Education, or one approved by a legal accrediting agency of another state, territory or possession of the United States, the District of Columbia, or a foreign country which is satisfactory to this board;

(d) Evidence of competence in English related to nursing, provided the first language is not English;

(e) Any other official records required by the board.

In addition to the requirements specified in paragraphs (a) through (e) of this subsection, in order to qualify for a license to practice practical nursing as a licensed practical nurse, an applicant must have successfully been cleared for licensure through an investigation that shall consist of a determination as to good moral character and verification that the prospective licensee is not guilty of or in violation of any statutory ground for denial of licensure as set forth in Section 73-15-29 or guilty of any offense specified in Section 73-15-33. To assist the board in conducting its licensure investigation, all applicants shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of his or her fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose.

Any and all state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

The board shall provide to the department the fingerprints of the applicant, any additional information that may be required by the department, and a form signed by the applicant consenting to the check of the criminal records and to the use of the fingerprints and other identifying information required by the state or national repositories.

The board shall charge and collect from the applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant.

The board may, in its discretion, refuse to accept the application of any person who has been convicted of a criminal offense under any provision of Title 97 of the Mississippi Code of 1972, as now or hereafter amended, or any provision of this article.

(2) **Licensure by examination.**

(a) Upon the board being satisfied that an applicant for a license as a practical nurse has met the qualifications set forth in subsection (1) of this section, the board shall proceed to examine such applicant in such subjects as the board shall, in its discretion, determine. The subjects in which applicants shall be examined shall be in conformity with curricula in schools of practical nursing approved by the State Department of Education.

(b) The applicant shall be required to pass the written examination selected by the board.

(c) Upon successful completion of such examination, the board shall issue to the applicant a license to practice as a licensed practical nurse.

(d) The board may use any part or all of the state board test pool examination for practical nurse licensure, its successor examination, or any other nationally standardized examination identified by the board in its rules. The passing score shall be established by the board in its rules.

(3) **Licensure by endorsement.** The board may issue a license to practice practical nursing as a licensed practical nurse without examination to an applicant who has been duly licensed as a licensed practical nurse under the laws of another state, territory or possession of the United States, the District of Columbia, or a foreign country if, in the opinion of the board, the applicant meets the qualifications required of licensed practical nurses in this state and has previously achieved the passing score or scores on the licensing examination required by this state at the time of his or her graduation. The issuance of a license by endorsement to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(4) **Licensure by equivalent amount of theory and clinical experience.** In the discretion of the board, former students of a state accredited school preparing students to become registered nurses may be granted permission to take the examination for licensure to practice as a licensed practical nurse, provided the applicant's record or transcript indicates the former student completed an equivalent amount of theory and clinical experiences as required of a graduate of a practical nursing program, and provided the school attended was, at the time of the student's attendance, an accredited school of nursing.

(5) **Requirements for rewriting the examination.** The board shall establish in its rules the requirements for rewriting the examination for those persons failing the examination on the first writing or subsequent writing.

(6) **Fee.** The applicant applying for a license by examination or by endorsement to practice as a licensed practical nurse shall pay a fee not to exceed Sixty Dollars ($60.00) to the board.

(7) **Temporary permit.**

(a) The board may issue a temporary permit to practice practical nursing to a graduate of an approved school of practical nursing pending the results of the examination in Mississippi, and to a qualified applicant from another state, territory or possession of the United States, or the District of Columbia, pending licensing procedures as provided for elsewhere in this article. The fee shall not exceed Twenty-five Dollars ($25.00).

(b) The board may issue a temporary permit for a period of ninety (90) days to a licensed practical nurse who is currently licensed in another state, territory or possession of the United States or the District of Columbia and who is an applicant for licensure by endorsement. Such permit is not renewable except by board action. The issuance of a temporary permit to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(c) The board may issue a temporary permit to a graduate of an approved practical nursing education program or an equivalent program satisfactory to the board pending the results of the first licensing examination scheduled after application. Such permit is not renewable except by board action.

(d) The board may issue a temporary permit for a period of thirty (30) days to any licensed practical nurse during the time enrolled in a nursing reorientation program. This time period may be extended by board action. The fee shall not exceed Twenty-five Dollars ($25.00).

(e) The board may adopt such regulations as are necessary to limit the practice of persons to whom temporary permits are issued.

(8) **Title and abbreviation.** Any person who holds a license or holds the privilege to practice as a licensed practical nurse in this state shall have the right to use the title "licensed practical nurse" and the abbreviation "L.P.N." No other person shall assume such title or use such abbreviation, or any words, letters, signs or devices to indicate that a person using the same is a licensed practical nurse.

(9) **Licensed practical nurses licensed under a previous law.** Any person holding a license to practice nursing as a practical nurse issued by this board which is valid on July 1, 1981, shall thereafter be deemed to be licensed as a practical nurse under the provisions of this article upon payment of the fee prescribed in Section 73-15-27.

(10) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Codes, 1942, § 8806-11; Laws, 1970, ch. 420, § 11; Laws, 1976, ch. 356, § 5; Laws, 1977, ch. 353, § 2; Laws, 1981, ch. 449, § 10; Laws, 1983, ch. 485, § 11; reenacted, Laws, 1991, ch. 465, § 11; Laws, 1997, ch. 588, § 43; Laws, 2000, ch. 482, § 7; Laws, 2010, ch. 464, § 2; Laws, 2013, ch. 350, § 17, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The word "chapter" was changed to "article" in subsections (1), (7)(a) and (9). The Joint Committee ratified the correction at its June 26, 2007, meeting.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Provisions of the Mississippi Public Records Act of 1983, see § 25-61-1 et seq.

Nursing schools, see § 37-129-1 et seq.

Nurse Licensure Compact, see § 73-15-201.

Comparable Laws from other States — Alabama: Code of Ala. § 34-21-22.

Arkansas: A.C.A. § 17-87-304.

Georgia: O.C.G.A. § 43-26-38.

Louisiana: La. R.S. § 37:972.

North Carolina: N.C. Gen. Stat. § 90-171.32.

South Carolina: S.C. Code Ann. § 40-33-36.

Tennessee: Tenn. Code Ann. § 63-7-110.

Virginia: Va. Code Ann. § 54.1-3021.

West Virginia: W. Va. Code § 30-7A-6.

RESEARCH REFERENCES

ALR. Requirement that employees speak English in workplace as discrimination in employment under Title VII of Civil Rights Act of 1964 (42 USCS §§ 2000e et seq). 90 A.L.R. Fed. 806.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers § 45.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers § 24-29.

§§ 73-15-22 and 73-15-23. Repealed.

Repealed by Laws of 2017, ch. 359, effective from and after July 20, 2017.

§ 73-15-22. [Laws, 2000, ch. 482, § 1, eff from and after July 1, 2001]

§ 73-15-23. [Laws, 2000, ch. 482, § 2, eff from and after July 1, 2001]

Editor's Note — Former § 73-15-22 enacted the former Nurse Licensure Compact. For present similar provisions, see § 73-15-201.

Former § 73-15-23 provided that the head of the nurse licensing board under the former Nurse Licensure Compact was the Executive Director of the Mississippi Board of Nursing. For present similar provisions, see § 73-15-202.

Laws of 2017, ch. 359, §§ 5-7 provide:

"SECTION 5. Sections 73-15-22 and 73-15-23, Mississippi Code of 1972, which are the former Nurse Licensure Compact, are repealed.

"SECTION 6. The provisions of this act shall not take effect until a substantially similar act is enacted by at least twenty-six (26) states or on December 31, 2018, whichever occurs first, in accordance with Article X of the Nurse Licensure Compact, as enacted by Section 1 of this act [codified as Section 73-15-201]. If twenty-six (26) states enact a substantially similar act before December 31, 2018, the Mississippi Board of Nursing shall notify the House and Senate Legislative Services Offices within five (5) days after the 26th state has enacted the act.

"SECTION 7. This act shall take effect and be in force from and after July 1, 2017, subject to the provisions of Section 6 of this act."

On July 20, 2017, North Carolina became the 26th member state to sign legislation enacting the compact, making the effective date of Laws of 2017, Chapter 359, July 20, 2017.

§ 73-15-25. Approval of schools of practical nursing.

In addition to all other powers and duties now vested by law in the State Department of Education, it is hereby empowered and required, acting in this behalf by and through its Division of Vocational Education, to:

1. Contract with the Mississippi Community College Board to establish by rules and regulations and promulgate uniform standards for the accreditation of schools of practical nursing in this state insofar as concerns the eligibility of graduates of such schools to take the examination to become licensed practical nurses;
2. Contract with the Mississippi Community College Board to issue to such schools certificates of accreditation as may be proper under such standards.

SOURCES: Codes, 1942, § 8806-13; Laws, 1970, ch. 420, § 13; reenacted, 1983, ch. 485, § 12; reenacted, Laws, 1991, ch. 465, § 12; Laws, 2010, ch. 464, § 4; Laws, 2014, ch. 397, § 63, eff from and after July 1, 2014.

Cross References — Nursing Schools, see § 37-129-1 et seq.

§ 73-15-27. Renewal and reinstatement of licenses; placement of license on inactive status.

The license of every person licensed under the provisions of this article shall be renewed biennially except as hereinafter provided:

(a) Registered nurses:

(i) Except as provided in Section 33-1-39, the license to practice as a registered nurse shall be valid for two (2) calendar years, beginning January 1 of each uneven-numbered year and expiring December 31 in each even-numbered year of the biennial period and subject to renewal for each period of two (2) years thereafter.

(ii) A notice for renewal of licensure will be mailed by the board on or before November 1 of the year the license expires to every person to whom a license was issued or renewed during the biennial period. An application shall be completed and returned to the board by December 31 of that year with the biennial renewal fee to be set at the discretion of the board, but not to exceed One Hundred Dollars ($100.00).

(iii) Upon receipt of the application and fee, the board shall verify the accuracy of the application and issue to the applicant a certificate of renewal for the ensuing period of two (2) years. Such renewal shall render the holder thereof the right to practice as a registered nurse.

(iv) A registered nurse may request in writing to the board that his or her license be placed on inactive status. The board may grant such request and shall have authority, in its discretion, to attach conditions to the licensure of such registered nurse while on inactive status. A biennial renewal fee for inactive registered nurses shall be set at the discretion of the board, not to exceed Fifty Dollars ($50.00).

(v) Any registered nurse applying for a license, renewal of an active license, reinstatement of a lapsed license, or change from inactive to active status may be required to provide evidence of continuing basic nursing competencies when such nurse has not practiced nursing for compensation or performed the function of a registered nurse in a voluntary capacity with or without compensation within the five-year period immediately prior to such application for a license, renewal, reinstatement or change of status.

(vi) Any registered nurse who permits his or her license to lapse by failing to renew the license as provided above may be reinstated by the board on satisfactory explanation for such failure to renew his or her license, by compliance with all other applicable provisions of this article, by completion of a reinstatement form, and upon payment of a reinstatement fee not to exceed One Hundred Dollars ($100.00), which shall not include the renewal fee for the current biennial period. Any registered nurse who permits his or her license to lapse shall be notified by the board within fifteen (15) days of such lapse.

(vii) Any person practicing as a registered nurse during the time his or her license has lapsed shall be considered in violation of this article and shall be subject to the penalties provided for violation of this article, provided the registered nurse has not submitted the required reinstatement form and fees within fifteen (15) days after notification by the board of such lapse.

(b) Licensed practical nurses:

(i) Except as provided in Section 33-1-39, the license to practice as a licensed practical nurse shall be valid for two (2) calendar years, beginning January 1 of each even-numbered year and expiring December 31 in each uneven-numbered year of the biennial period and subject to renewal for each period of two (2) years thereafter.

(ii) A notice for renewal of licensure will be mailed by the board on or before November 1 of the year the license expires to every person to whom a license was issued or renewed during the biennial period. An application shall be completed and returned to the board by December 31 of that year with the biennial renewal fee to be set at the discretion of the board, but not to exceed One Hundred Dollars ($100.00).

(iii) Upon receipt of the application and fee, the board shall verify the accuracy of the application and issue to the applicant a certificate of renewal for the ensuing period of two (2) years. Such renewal shall render the holder thereof the right to practice as a licensed practical nurse.

(iv) A licensed practical nurse may request in writing to the board that his or her license be placed on inactive status. The board may grant such request and shall have authority, in its discretion, to attach conditions to the licensure of such licensed practical nurse while on inactive status. A biennial renewal fee for inactive licensed practical nurses shall be set at the discretion of the board, not to exceed Fifty Dollars ($50.00).

(v) Any licensed practical nurse applying for a license, renewal of an active license, reinstatement of a lapsed license, or change from inactive to active status may be required to provide evidence of continuing basic nursing competencies when such nurse has not practiced nursing for compensation or performed the function of a licensed practical nurse in a voluntary capacity with or without compensation within the five-year period immediately prior to such application for a license, renewal, reinstatement or change of status.

(vi) Any licensed practical nurse who permits his or her license to lapse by failing to renew the license as provided above may be reinstated by the board upon satisfactory explanation for such failure to renew his or her license, by compliance with all other applicable provisions of this article, by completion of a reinstatement form, and upon payment of the reinstatement fee not to exceed One Hundred Dollars ($100.00), which shall not include the renewal fee for the current biennial period. Any licensed practical nurse who permits his or her license to lapse shall be notified by the board within fifteen (15) days of such lapse.

(vii) Any person practicing as a licensed practical nurse during the time his or her license has lapsed shall be considered an illegal practitioner and shall be subject to the penalties provided for violation of this article, provided the licensed practical nurse has not submitted the required reinstatement form and fees within fifteen (15) days after notification by the board of such lapse.

SOURCES: Codes, 1942, § 8806-14; Laws, 1970, ch. 420, § 14; Laws, 1976, ch. 356, § 6; Laws, 1981, ch. 449, § 11; Laws, 1982, ch. 327; Laws, 1983, ch. 485, § 13; Laws, 1987, ch. 347; Laws, 1988, ch. 469, § 3; reenacted, Laws, 1991, ch. 465, § 13; Laws, 2006, ch. 343, § 3; Laws, 2007, ch. 309, § 14; Laws, 2007, ch. 515, § 1, eff from and after July 1, 2007.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The word "chapter" was changed to "article" in the introductory paragraph, subsections (a)(vi) and (vii) and (b)(vi) and (b)(vii). The Joint Committee ratified the correction at its June 26, 2007, meeting.

Section 14 of ch. 309, Laws of 2007, effective upon passage (approved March 8, 2007), amended this section. Section 1 of ch. 515, Laws of 2007, effective July 1, 2007 (approved April 20, 2007), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the June 26, 2007, meeting of the Committee.

Cross References — Board to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health care providers, see § 41-34-3.

Requirement that Board establish procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

Licensing of registered nurses licensed under a previous law, upon payment of the prescribed fee, see § 73-15-19.

Licensing of practical nurses licensed under a previous law, upon payment of the prescribed fee, see § 73-15-21.

Violations and penalties, see § 73-15-33.

Injunctive relief under this article, see § 73-15-35.

Injunctions to restrain illegal practice of profession, see § 73-51-1.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 45, 62 et seq.

§ 73-15-29. Grounds for denying, revoking, or suspending license; penalties for engaging in prohibited conduct [Paragraph (1)(n) repealed effective July 1, 2020].

(1) The board shall have power to revoke, suspend or refuse to renew any license issued by the board, or to revoke or suspend any privilege to practice, or to deny an application for a license, or to fine, place on probation and/or

discipline a licensee, in any manner specified in this article, upon proof that such person:

(a) Has committed fraud or deceit in securing or attempting to secure such license;

(b) Has been convicted of felony, or a crime involving moral turpitude or has had accepted by a court a plea of nolo contendere to a felony or a crime involving moral turpitude (a certified copy of the judgment of the court of competent jurisdiction of such conviction or pleas shall be prima facie evidence of such conviction);

(c) Has negligently or willfully acted in a manner inconsistent with the health or safety of the persons under the licensee's care;

(d) Has had a license or privilege to practice as a registered nurse or a licensed practical nurse suspended or revoked in any jurisdiction, has voluntarily surrendered such license or privilege to practice in any jurisdiction, has been placed on probation as a registered nurse or licensed practical nurse in any jurisdiction or has been placed under a disciplinary order(s) in any manner as a registered nurse or licensed practical nurse in any jurisdiction, (a certified copy of the order of suspension, revocation, probation or disciplinary action shall be prima facie evidence of such action);

(e) Has negligently or willfully practiced nursing in a manner that fails to meet generally accepted standards of such nursing practice;

(f) Has negligently or willfully violated any order, rule or regulation of the board pertaining to nursing practice or licensure;

(g) Has falsified or in a repeatedly negligent manner made incorrect entries or failed to make essential entries on records;

(h) Is addicted to or dependent on alcohol or other habit-forming drugs or is a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effect, or has misappropriated any medication;

(i) Has a physical, mental or emotional condition that renders the licensee unable to perform nursing services or duties with reasonable skill and safety;

(j) Has engaged in any other conduct, whether of the same or of a different character from that specified in this article, that would constitute a crime as defined in Title 97 of the Mississippi Code of 1972, as now or hereafter amended, and that relates to such person's employment as a registered nurse or licensed practical nurse;

(k) Engages in conduct likely to deceive, defraud or harm the public;

(*l*) Engages in any unprofessional conduct as identified by the board in its rules;

(m) Has violated any provision of this article; or

(n) Violation(s) of the provisions of Sections 41-121-1 through 41-121-9 relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2020.

(2) When the board finds any person unqualified because of any of the grounds set forth in subsection (1) of this section, it may enter an order imposing one or more of the following penalties:

(a) Denying application for a license or other authorization to practice nursing or practical nursing;

(b) Administering a reprimand;

(c) Suspending or restricting the license or other authorization to practice as a registered nurse or licensed practical nurse for up to two (2) years without review;

(d) Revoking the license or other authorization to practice nursing or practical nursing;

(e) Requiring the disciplinee to submit to care, counseling or treatment by persons and/or agencies approved or designated by the board as a condition for initial, continued or renewed licensure or other authorization to practice nursing or practical nursing;

(f) Requiring the disciplinee to participate in a program of education prescribed by the board as a condition for initial, continued or renewed licensure or other authorization to practice;

(g) Requiring the disciplinee to practice under the supervision of a registered nurse for a specified period of time; or

(h) Imposing a fine not to exceed Five Hundred Dollars ($500.00).

(3) In addition to the grounds specified in subsection (1) of this section, the board shall be authorized to suspend the license or privilege to practice of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license or privilege to practice for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license or privilege to practice suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license or privilege to practice suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this article, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

(4) If the public health, safety or welfare imperatively requires emergency action and the board incorporates a finding to that effect in an order, the board may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined by the board.

SOURCES: Codes, 1942, § 8806-15; Laws, 1970, ch. 420, § 15; Laws, 1976, ch. 356, § 7; Laws, 1981, ch. 449, § 12; Laws, 1983, ch. 485, § 14; reenacted, Laws, 1991, ch. 465, § 14; Laws, 1996, ch. 507, § 42; Laws, 2000, ch. 482, § 8; Laws, 2006, ch. 343, § 4; Laws, 2012, ch. 409, § 12; Laws, 2016, ch. 419, § 9, eff from and after July 1, 2016.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The word "chapter" was changed to "article" in the first paragraph of subsection (1), paragraph (1)(j) and (m), and in subsection (3). The Joint Committee ratified the correction at its June 26, 2007, meeting.

Amendment Notes — The 2016 amendment extended the repealer for paragraph (1)(n) by substituting "July 1, 2020" for "July 1, 2016" at the end of (1)(n).

Cross References — Board to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health care providers, see § 41-34-3.

Requirement that Board establish procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

Prescribing any controlled substance, legend drug or other medication in violation of rules promulgated by board of nursing constitutes a violation of this section and grounds for disciplinary action, see § 73-15-20.

JUDICIAL DECISIONS

1. In general.

Substantial evidence supported decision by State Board of Nursing to revoke nurse's license; testimony was presented that nurse had violated applicable standards by holding naked infant around its neck by one hand in an unsafe manner, and nurse admitted that she had carried babies by their armpits, carried infants to scales and to sink to wash their heads, and flipped levers on incubators to stimulate babies. Mississippi Bd. of Nursing v. Hanson, 703 So. 2d 239 (Miss. 1997), reh'g denied, 702 So. 2d 133 (Miss. 1997).

Board of Nursing properly defines professional misconduct for purposes of disciplinary proceedings as practicing nursing beyond authorized scope of license. Mississippi Bd. of Nursing v. Belk, 481 So. 2d 826 (Miss. 1985).

Nurse anesthetist who does not object to existence or authenticity of rules and regulations of Board of Nursing during administrative proceeding regarding nurse's compliance with certification procedures may not raise issue on judicial review. Mississippi Bd. of Nursing v. Belk, 481 So. 2d 826 (Miss. 1985).

Because § 73-15-29 permits revocation of a nursing license, it is penal in nature and must be strictly construed against the governmental agency attempting to revoke a license, and when a nurse is alleged to have misappropriated narcotics, the Board must prove that charge by clear and convincing evidence. Hogan v. Mississippi Bd. of Nursing, 457 So. 2d 931 (Miss. 1984).

RESEARCH REFERENCES

ALR. Revocation of nurse's license to practice profession. 55 A.L.R.3d 1141.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 45, 65 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

29 Am. Jur. Trials 591, Hospital Liability for Nursing Medication Errors.

26 Am. Jur. Proof of Facts 2d 363, Malpractice of Psychiatric Nurse.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 52-59, 63.

§ 73-15-31. Disciplinary proceedings.

(1) Charges may be brought upon sworn affidavit filed by the Board of Nursing against any licensee who has allegedly committed any act in violation of this article that is grounds for disciplinary action. Upon receiving the sworn affidavit charging a licensee with an act which is a ground for disciplinary action under this article, the executive director or designee of the board shall fix a time and place for a hearing and shall cause a copy of the specific

allegations and charges to be sent by certified mail or served by personal service of process together with notice of the time and place fixed for the hearing, to be served upon the accused at least fifteen (15) days prior thereto. The accused may waive notice of the hearing in writing and the board may grant the accused at least one (1) extension of time, upon the request of the accused. When personal service of process or service of process by certified mail cannot be effected, the executive director of the board shall cause to be published once in each of three (3) successive weeks a notice of the hearing in the newspapers published in the county in which the accused last practiced according to the records of the board, or in the county in which the accused last resided. When publication of the notice is necessary, the date of the hearing shall not be less than ten (10) days after the last date of the notice.

(2) The board, acting by and through its executive director, shall have the power to subpoena persons and compel the production of any records, including, but not limited to, hospital and physician's records, papers and other documents, which shall be served in accordance with law for the Board of Nursing and on behalf of the accused. The person providing copies shall prepare them from the original records and shall delete from the copy provided pursuant to the subpoena the name of the individual by numbered code, to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the individual's name, they shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to such copies, and no liabilities shall lie against the board or the custodian for furnishing or using such copies in accordance with this article.

(3) All records of the investigation and all patient charts, records, emergency room records or any other document that may have been copied shall be kept confidential and shall not be subject to discovery or subpoena. If no disciplinary proceedings are initiated within a period of five (5) years after the determination of insufficient cause, then the board shall destroy all records obtained pursuant to this section.

(4) At the hearings the board shall administer oaths as may be necessary for the proper conduct of the hearings. The accused shall have the right to appear either personally or by counsel, or both, to produce witnesses or evidence in his or her behalf, to cross-examine witnesses, and to have subpoenas issued by the board. All disciplinary hearings shall be conducted by a hearing panel consisting of three (3) members of the board, designated on a rotating basis by the board. All disciplinary hearings or appeals before the board and the Attorney General, and/or a designee thereof, shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be based upon sufficient legal evidence to sustain it. A final decision by the hearing panel and by the board on appeal shall include findings of fact and conclusions of law, separately stated, of which the accused shall receive a copy.

(5) If the hearing panel determines that probable cause and sufficient legal evidence exist to believe that an applicant does not possess the qualifi-

cations required by this article or that an accused has violated any of the provisions of this article, the hearing panel may refuse to issue a license to the applicant, or revoke, suspend, refuse to renew a license, or revoke or suspend the privilege to practice, or otherwise discipline the accused as prescribed in this article.

(6) No previously issued license to practice nursing as a registered nurse or as a licensed practical nurse shall be revoked or suspended until after a hearing conducted pursuant to this article, except where the board finds there is imminent danger to the public health or safety that warrants injunctive relief provided in this article.

(7) A revoked or suspended license may be reissued after one (1) year, in the discretion of the hearing panel. A revoked or suspended privilege to practice may be reinstated after one (1) year, in the discretion of the hearing panel. The denial of an application to renew an existing license shall be treated in all respects as a revocation. The procedure for the reissuance of a license or reinstatement of the privilege to practice that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(8) The hearing panel need not find that the actions that are grounds for discipline were willful, but it may consider the same in determining the nature of the disciplinary actions imposed.

(9) The right to appeal from the action of the hearing panel to the full membership of the board in denying, revoking, suspending or refusing to renew any license issued by the board, or revoking or suspending any privilege to practice, or fining or otherwise disciplining any person practicing as a registered nurse or licensed practical nurse, is granted. The appeal must be taken within thirty (30) days after notice of the action of the hearing panel in denying, revoking, suspending or refusing to renew the license, or revoking or suspending the privilege to practice, or fining or otherwise disciplining the person, and is perfected upon filing notice of appeal and Fifty Dollars ($50.00) with the executive director of the board.

(10) The right to appeal from the action of the board in affirming the denial, revocation, suspension or refusal to renew any license issued by the board, or revoking or suspending any privilege to practice, or fining or otherwise disciplining of any person practicing as a registered nurse or a licensed practical nurse, is granted. Such appeal shall be to the chancery court of the county of the residence of the licensee on the record made, including a verbatim transcript of the testimony at the hearing. The appeal must be taken within thirty (30) days after notice of the action of the board in denying, revoking, suspending or refusing to renew the license, or revoking or suspending the privilege to practice, or fining or otherwise disciplining the person. The appeal is perfected upon filing notice of the appeal, together with a bond in the sum of One Hundred Dollars ($100.00), with two (2) sureties, conditioned that if the action of the board in denying, revoking, suspending or refusing to renew the license, or revoking or suspending the privilege to practice, or fining or otherwise disciplining the person, be affirmed by the chancery court the nurse

will pay the costs of the appeal and the action in the chancery court. Such bond shall be approved by the president of the board. In lieu of the bond, the nurse may deposit One Hundred Dollars ($100.00) with the clerk of the chancery court. Appeals may be had to the Supreme Court of the State of Mississippi as provided by law from any final action of the chancery court. No such person shall be allowed to practice nursing or deliver health care services in violation of any action of the chancery court denying, revoking, suspending, restricting or refusing to renew a license or revoking or suspending the privilege to practice while any such appeal to the Supreme Court is pending. Actions taken by the board in suspending a license or suspending the privilege to practice when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension or suspension of the privilege to practice that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

(11) Nothing contained in this article shall be construed to bar any criminal prosecutions for violation of this article or any regulations promulgated hereunder.

(12) Any member of the board and any witness appearing before the board shall be immune from suit in any civil action brought by a licensee who is the subject of a review hearing if such member or witness acts in good faith within the scope of the board and has made a reasonable effort to obtain the facts of the matter as to which the individual acts, and acts in the reasonable belief that the action taken is warranted by the facts.

(13) Proceedings in progress on July 1, 1998, to deny, revoke, suspend or refuse to renew any license, or fine or otherwise discipline a licensee, shall not abate by reason of this article.

SOURCES: Codes, 1942, § 8806-16; Laws, 1970, ch. 420, § 16; Laws, 1981, ch. 449, § 13; Laws, 1983, ch. 485, § 15; reenacted, Laws, 1991, ch. 465, § 15; Laws, 1995, ch. 455, § 1; Laws, 1996, ch. 507, § 43; Laws, 1998, ch. 326, § 1; Laws, 2000, ch. 482, § 9, eff from and after July 1, 2000.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The word "chapter" was changed to "article" in subsections (1), (2), (5), (6), (11) and (13). The Joint Committee ratified the correction at its June 26, 2007, meeting.

JUDICIAL DECISIONS

1. In general.

Chancery courts in Mississippi had jurisdiction to determine appeals stemming from decisions of the Mississippi Board of Nurses; however, an appellant had to file the appeal to the chancery court of the county of his residence and where the nurse appealed to the wrong county, the case was remanded for entry of an order transferring the case to the nurse's resident county. Taylor v. Miss. Bd. of Nursing, 863 So. 2d 1015 (Miss. Ct. App. 2004).

Federal law, not state law of immunity, governed immunities enjoyed by state officials sued under 42 U.S.C.S. § 1983 and, thus, Mississippi statute governing immunity of members of state Board of Nursing called to testify in court did not limit members' absolute quasi-judicial immunity for actions taken in disciplinary proceedings; § 1983 created federal cause of action. Duncan v. Mississippi Bd. of Nursing, 982 F. Supp. 425 (S.D. Miss. 1997), aff'd, 129 F.3d 611 (5th Cir. 1997).

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 45, 65 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 60, 61 et seq.

§ 73-15-33. Violations and penalties.

It is unlawful for any person, including a corporation or association, to:

(a) Sell, fraudulently obtain or furnish any nursing diploma, license, renewal of license, or record, or to aid or abet therein;

(b) Practice nursing as defined by this article under cover of any diploma, license, renewal of license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(c) Practice or offer to practice nursing as defined by this article unless duly licensed or privileged to practice under the provisions of this article;

(d) Use any title, designation or abbreviation by which a person presents to the public that he or she is a registered nurse, a licensed practical nurse or any other type of nurse, unless the person is duly licensed or privileged to practice under the provisions of this article; however, this paragraph does not prohibit a certified nurse assistant or certified nursing assistant from using the word "nurse" or "nursing" as part of his or her job title;

(e) Practice as a registered nurse or a licensed practical nurse during the time his or her license or privilege to practice issued under the provisions of this article is under suspension or revocation;

(f) Conduct a nursing education program for the preparation of registered nurses, unless the program has been accredited by the Board of Trustees of State Institutions of Higher Learning, or conduct a nursing education program for the preparation of licensed practical nurses unless the program has been accredited by the Department of Education through the Division of Vocational Education;

(g) Willfully employ unlicensed persons or persons not holding the privilege to practice, to practice as registered nurses or licensed practical nurses; or

(h) Willfully aid or abet any person who violates any provisions of this article.

Any person, firm or corporation who violates any provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) or by imprisonment in the county jail for not less than twelve (12) months, or by both such fine and imprisonment. It shall be necessary to prove, in any prosecution under this article, only a single act prohibited by law, or a single holding out or an attempt without proving a general course of conduct in order to constitute a violation. Each violation may constitute a separate offense. Except as otherwise authorized in Section 7-5-39, it shall be the duty of the Attorney General to advise with the board in preparing charges, to assist in conducting board disciplinary hearings, to provide assistance with appropriate affidavits and other charges for filing in the appropriate court, and to assist the county or district attorney in prosecution, if any.

SOURCES: Codes, 1942, § 8806-17; Laws, 1970, ch. 420, § 17; Laws, 1981, ch. 449, § 14; reenacted, Laws, 1983, ch. 485, § 16; reenacted, Laws, 1991, ch. 465, § 16; Laws, 2000, ch. 482, § 10; Laws, 2009, ch. 326, § 1; Laws, 2012, ch. 546, § 35, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The word "chapter" was changed to "article" throughout the section. The Joint Committee ratified the correction at its June 26, 2007, meeting.

Cross References — Board of State Institutions of Higher Learning generally, see §§ 37-101-1 et seq.

Injunctive relief under this article, see § 73-15-35.

Injunctions to restrain illegal practice of profession, see § 73-51-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 45, 65 et seq., 106 et seq., 109 et seq., 353 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 43-51.

§ 73-15-35. Injunctive relief.

The practice of nursing as a registered nurse or the practice of nursing as a licensed practical nurse by any person who has not been issued a license or who does not hold the privilege to practice under the provisions of this article, or whose license or privilege to practice has been suspended or revoked, or has expired and not been reinstated, or has negligently or willfully practiced nursing in a manner that fails to meet generally accepted standards of such nursing practice, is declared to be a danger to the public health and welfare and shall be enjoined through appropriate court action. In addition to and not in lieu of any other civil, criminal or disciplinary remedy, the Attorney General, the Board of Nursing or the prosecuting attorney of any county where a person is practicing or purporting to practice as a registered nurse or as a licensed practical nurse in violation of this article may, in accordance with the laws of this state governing injunctions, maintain an action to enjoin that person from practicing as a registered nurse or a licensed practical nurse until in compliance with this article. The court may issue a temporary injunction without notice or without bond enjoining a defendant from further practicing as a registered nurse or a licensed practical nurse. If it is established to the satisfaction of the court that the defendant has been or is practicing as a registered nurse or a licensed practical nurse without being licensed or privileged to practice and in good standing as provided herein, the court may enter a decree perpetually enjoining the defendant from such further activities, and a subsequent violation of which may be considered as contempt of court by any court of competent jurisdiction. Such injunction and contempt proceedings may be in addition to and not in lieu of any other penalties and remedies provided by this article.

SOURCES: Codes, 1942, § 8806-18; Laws, 1970, ch. 420, § 18; Laws, 1981, ch. 449, § 15; reenacted, Laws, 1983, ch. 485, § 17; reenacted, Laws, 1991, ch. 465, § 17; Laws, 2000, ch. 482, § 11; Laws, 2006, ch. 343, § 5, eff from and after July 1, 2006.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The word "chapter" was changed to "article" throughout the section. The Joint Committee ratified the correction at its June 26, 2007, meeting.

Cross References — Injunctions to restrain illegal practice of profession, see § 73-51-1.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 106 et seq.

26 Am. Jur. Proof of Facts 2d 363, Malpractice of Psychiatric Nurse.

§ 73-15-37. Repealed.

Repealed by Laws of 1991, ch. 465, § 18, eff from and after July 1, 1991.

[Laws, 1979, ch. 301, § 35; Laws, 1979, ch. 357, § 14; Laws, 1983, ch. 485, § 18]

Editor's Note — Laws of 1979, ch. 301, § 55, provides as follows:

"SECTION 55. The codifier of this act is hereby authorized and directed to codify Sections 16 through 54 of this act with the enabling legislation of the governmental units which are affected by said sections."

Former § 73-15-37 provided for the repeal of §§ 73-15-1 through 73-15-35 as of December 31, 1991.

ARTICLE 3.

HEMODIALYSIS TECHNICIANS.

SEC.	
73-15-101.	Statewide hemodialysis technician certification program created; practicing as certified hemodialysis technician prohibited unless certified under this section; powers of Board of Nursing; applicant qualifications; requirements for renewal of certification; fees.

§ 73-15-101. Statewide hemodialysis technician certification program created; practicing as certified hemodialysis technician prohibited unless certified under this section; powers of Board of Nursing; applicant qualifications; requirements for renewal of certification; fees.

(1) A statewide program for certification of hemodialysis technicians is created under the Mississippi Board of Nursing.

(2) Unless certified as a certified hemodialysis technician under this section, no person shall:

(a) Practice as a certified hemodialysis technician; or

(b) Use the title "certified hemodialysis technician," "hemodialysis technician," or other title, abbreviation, letters, figures, signs, or devices to indicate or imply that the person is a certified hemodialysis technician.

(3) The Board of Nursing is authorized and empowered to:

(a) Maintain a permanent register of all certified hemodialysis technicians;

(b) Adopt rules and regulations for certified hemodialysis technician training programs, including standards and curricula;

(c) Provide for periodic evaluation of training programs;

(d) Grant, deny or withdraw approval from a training program that fails to meet prescribed standards or fails to maintain a current contract with the board;

(e) Develop, maintain and administer a certification examination, or grant, deny or withdraw approval of a certification examination(s);

(f) Adopt rules and regulations for certification of hemodialysis technicians by examination, endorsement, renewal and reinstatement; however, the certification by endorsement of a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1; and

(g) Conduct disciplinary hearings of certified hemodialysis technicians concerning the restriction, denial, suspension, revocation and/or discipline of a certificate holder in any manner specified in rules and regulations of the board.

(4) Any applicant for certification to practice as a hemodialysis technician shall submit to the Board of Nursing:

(a) An attested written application on a Board of Nursing form;

(b) A diploma from an approved high school or the equivalent thereof, as determined by the appropriate education agency;

(c) Written official evidence of completion of a hemodialysis technician program approved by the Board of Nursing;

(d) Evidence of competence in English related to health care/nursing if the first language is not English;

(e) Written official evidence that the applicant has passed the certification examination as approved by the Board of Nursing; and

(f) Any other official records required by the Board of Nursing.

The Board of Nursing may, in its discretion, refuse to accept the application of any person who has been convicted of a criminal offense under any provision of Title 97 of the Mississippi Code of 1972, or any offense listed in Section 43-11-13(5), or any sex offense included in Section 45-33-23(h), as now or hereafter amended.

(5) Every certificate issued by the Board of Nursing to practice as a certified hemodialysis technician shall be renewed every two (2) years. The certified hemodialysis technician seeking renewal shall submit proof of employment as a certified hemodialysis technician, proof of having met continuing education requirements adopted by the Board of Nursing and any other official records required by the Board of Nursing.

(6) The Board of Nursing shall establish nonrefundable fees necessary for the administration of this section, including, but not limited to, fees for initial certification by initial or later examination, renewal of certification, reinstatement of a lapsed certificate, endorsement, initial review and approval of a training program, and later review and approval of a training program.

SOURCES: Laws, 2006, ch. 413, § 1; Laws, 2013, ch. 350, § 18, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in subsection (4). The reference to "Section 45-33-23(g)" was changed to "Section 45-33-23(h)." The Joint Committee ratified the correction at its August 1, 2013, meeting.

ARTICLE 5.

NURSE LICENSURE COMPACT.

SEC.
73-15-201. Nurse licensure compact.
73-15-202. "Head of the state licensing board" defined.

§ 73-15-201. Nurse licensure compact.

The Nurse Licensure Compact is enacted into law and entered into by this state with any and all states legally joining in the compact in accordance with its term, in the form substantially as follows:

ARTICLE I.

Findings and declaration of purpose.

(a) The party states find that:

1. The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

2. Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

3. The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

4. New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

5. The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and

6. Uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

(b) The general purposes of this compact are to:

1. Facilitate the states' responsibility to protect the public's health and safety;

2. Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

3. Facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions;

4. Promote compliance with the laws governing the practice of nursing in each jurisdiction;

5. Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;

6. Decrease redundancies in the consideration and issuance of nurse licenses; and

7. Provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

ARTICLE II.

Definitions.

As used in this compact:

(a) "Adverse action" means any administrative, civil, equitable or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.

(b) "Alternative program" means a nondisciplinary monitoring program approved by a licensing board.

(c) "Coordinated licensure information system" means an integrated process for collecting, storing and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.

(d) "Current significant investigative information" means:

1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(e) "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

(f) "Home state" means the party state which is the nurse's primary state of residence.

(g) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

(h) "Multistate license" means a license to practice as a registered or a licensed practical/vocational nurse (LPN/VN) issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

(i) "Multistate licensure privilege" means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse (RN) or LPN/VN in a remote state.

(j) "Nurse" means RN or LPN/VN, as those terms are defined by each party state's practice laws.

(k) "Party state" means any state that has adopted this compact.

(*l*) "Remote state" means a party state, other than the home state.

(m) "Single-state license" means a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.

(n) "State" means a state, territory or possession of the United States and the District of Columbia.

(o) "State practice laws" means a party state's laws, rules and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III.

General provisions and jurisdiction.

(a) A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse (RN) or as a licensed practical/vocational nurse (LPN/VN), under a multistate licensure privilege, in each party state.

(b) A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

(c) Each party state shall require the following for an applicant to obtain or retain a multistate license in the home state:

1. Meets the home state's qualifications for licensure or renewal of licensure, as well as, all other applicable state laws;

2.(i) Has graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN prelicensure education program; or

(ii) Has graduated from a foreign RN or LPN/VN prelicensure education program that (a) has been approved by the authorized accrediting body in the applicable country and (b) has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;

3. Has, if a graduate of a foreign prelicensure education program not taught in English or if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing and listening;

4. Has successfully passed a National Council Licensure Examination-Registered Nurse (NCLEX-RN®) or National Council Licensure Examination-Practical Nurse (NCLEX-PN®) Examination or recognized predecessor, as applicable;

5. Is eligible for or holds an active, unencumbered license;

6. Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records;

7. Has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law;

8. Has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;

9. Is not currently enrolled in an alternative program;

10. Is subject to self-disclosure requirements regarding current participation in an alternative program; and

11. Has a valid United States social security number.

(d) All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension, probation or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(e) A nurse practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts and the laws of the party state in which the client is located at the time service is provided.

(f) Individuals not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. Nothing in this compact shall affect the requirements established by a party state for the issuance of a single-state license.

(g) Any nurse holding a home state multistate license, on the effective date of this compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that:

1. A nurse, who changes primary state of residence after this compact's effective date, must meet all applicable Article III(c) requirements to obtain a multistate license from a new home state.
2. A nurse who fails to satisfy the multistate licensure requirements in subsection (c) of this article due to a disqualifying event occurring after this compact's effective date shall be ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators ("commission").

ARTICLE IV.

Applications for licensure in a party state.

(a) Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant and whether the applicant is currently participating in an alternative program.

(b) A nurse may hold a multistate license, issued by the home state, in only one (1) party state at a time.

(c) If a nurse changes primary state of residence by moving between two (2) party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the commission.

1. The nurse may apply for licensure in advance of a change in primary state of residence.

2. A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

(d) If a nurse changes primary state of residence by moving from a party state to a nonparty state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

ARTICLE V.

Additional authorities invested in party state licensing boards.

(a) In addition to the other powers conferred by state law, a licensing board shall have the authority to:

1. Take adverse action against a nurse's multistate licensure privilege to practice within that party state.

(i) Only the home state shall have the power to take adverse action against a nurse's license issued by the home state.

(ii) For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state.

In so doing, the home state shall apply its own state laws to determine appropriate action.

2. Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.

3. Complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations. The licensing board shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

4. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, as well as, the production of evidence.

Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence are located.

5. Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the Federal Bureau of Investigation for criminal background checks, receive the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions.

6. If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

7. Take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.

(b) If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

(c) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

ARTICLE VI.

Coordinated licensure information system and exchange of information.

(a) All party states shall participate in a coordinated licensure information system of all licensed registered nurses (RNs) and licensed practical/vocational nurses (LPNs/VNs). This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) The commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under this compact.

(c) All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials) and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

(d) Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(e) Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(f) Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(g) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

(h) The compact administrator of each party state shall furnish a uniform data set to the compact administrator of each other party state, which shall include, at a minimum:

1. Identifying information;
2. Licensure data;
3. Information related to alternative program participation; and
4. Other information that may facilitate the administration of this compact, as determined by commission rules.

(i) The compact administrator of a party state shall provide all investigative documents and information requested by another party state.

ARTICLE VII.

Establishment of the Interstate Commission of Nurse Licensure.

Compact Administrators.

(a) The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.

1. The commission is an instrumentality of the party states.

2. Venue is proper, and judicial proceedings by or against the commission shall be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this compact shall be construed to be a waiver of sovereign immunity.

(b) Membership, voting and meetings.

1. Each party state shall have and be limited to one (1) administrator. The head of the state licensing board or designee shall be the administrator of this compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the administrator is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

2. Each administrator shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

3. The commission shall meet at least once during each calendar year.

Additional meetings shall be held as set forth in the bylaws or rules of the commission.

4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article VIII.

5. The commission may convene in a closed, nonpublic meeting if the commission must discuss:

(i) Noncompliance of a party state with its obligations under this compact;

(ii) The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(iii) Current, threatened or reasonably anticipated litigation;

(iv) Negotiation of contracts for the purchase or sale of goods, services or real estate;

(v) Accusing any person of a crime or formally censuring any person;

(vi) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(vii) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(viii) Disclosure of investigatory records compiled for law enforcement purposes;

(ix) Disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with this compact; or

(x) Matters specifically exempted from disclosure by federal or state statute.

6. If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(c) The commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including, but not limited to:

1. Establishing the fiscal year of the commission;

2. Providing reasonable standards and procedures:

(i) For the establishment and meetings of other committees; and

(ii) Governing any general or specific delegation of any authority or function of the commission;

3. Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed;

4. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the commission; and

6. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may

exist after the termination of this compact after the payment or reserving of all of its debts and obligations;

(d) The commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the commission.

(e) The commission shall maintain its financial records in accordance with the bylaws.

(f) The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

(g) The commission shall have the following powers:

1. To promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all party states;
2. To bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any licensing board to sue or be sued under applicable law shall not be affected;
3. To purchase and maintain insurance and bonds;
4. To borrow, accept or contract for services of personnel, including, but not limited to, employees of a party state or nonprofit organizations;
5. To cooperate with other organizations that administer state compacts related to the regulation of nursing, including, but not limited to, sharing administrative or staff expenses, office space or other resources;
6. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel matters;
7. To accept any and all appropriate donations, grants and gifts of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest;
8. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, whether real, personal or mixed; provided that at all times the commission shall avoid any appearance of impropriety;
9. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, whether real, personal or mixed;
10. To establish a budget and make expenditures;
11. To borrow money;
12. To appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, and consumer representatives, and other such interested persons;
13. To provide and receive information from, and to cooperate with, law enforcement agencies;
14. To adopt and use an official seal; and

15. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of nurse licensure and practice.

(h) Financing of the commission.

1. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

2. The commission may also levy on and collect an annual assessment from each party state to cover the cost of its operations, activities and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule that is binding upon all party states.

3. The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the party states, except by, and with the authority of, such party state.

4. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(i) Qualified immunity, defense and indemnification.

1. The administrators, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional, willful or wanton misconduct of that person.

2. The commission shall defend any administrator, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further that the actual or alleged act, error or omission did not result from that person's intentional, willful or wanton misconduct.

3. The commission shall indemnify and hold harmless any administrator, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional, willful or wanton misconduct of that person.

ARTICLE VIII.

Rulemaking.

(a) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this compact.

(b) Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

(c) Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

1. On the website of the commission; and
2. On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

(d) The notice of proposed rulemaking shall include:

1. The proposed time, date and location of the meeting in which the rule will be considered and voted upon;
2. The text of the proposed rule or amendment, and the reason for the proposed rule;
3. A request for comments on the proposed rule from any interested person; and
4. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

(e) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

(f) The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

(g) The commission shall publish the place, time and date of the scheduled public hearing.

1. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

All hearings will be recorded, and a copy will be made available upon request.

2. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

(h) If no one appears at the public hearing, the commission may proceed with promulgation of the proposed rule.

(i) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(j) The commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(k) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment or hearing, provided that the usual rulemaking procedures provided in this compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety or welfare;
2. Prevent a loss of commission or party state funds; or
3. Meet a deadline for the promulgation of an administrative rule that is required by federal law or rule.

(*l*) The commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE IX.

Oversight, dispute resolution and enforcement.

(a) Oversight:

1. Each party state shall enforce this compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent.

2. The commission shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities or actions of the commission, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the commission shall render a judgment or order void as to the commission, this compact or promulgated rules.

(b) Default, technical assistance and termination:

1. If the commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

(i) Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default or any other action to be taken by the commission; and

(ii) Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state's membership in this compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in this compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the Governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.

4. A state whose membership in this compact has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The commission shall not bear any costs related to a state that is found to be in default or whose membership in this compact has been terminated unless agreed upon in writing between the commission and the defaulting state.

6. The defaulting state may appeal the action of the commission by petitioning the United States District Court for the District of Columbia or the federal district in which the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(c) Dispute resolution:

1. Upon request by a party state, the commission shall attempt to resolve disputes related to the compact that arise among party states and between party and nonparty states.

2. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

3. In the event the commission cannot resolve disputes among party states arising under this compact:

(i) The party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the compact administrator in each of the affected party states and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute.

(ii) The decision of a majority of the arbitrators shall be final and binding.

(d) Enforcement:

1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district in which the commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this compact and its promulgated rules and bylaws.

The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

3. The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE X.

Effective date, withdrawal and amendment.

(a) This compact shall become effective and binding on the earlier of the date of legislative enactment of this compact into law by no less than twenty-six (26) states or December 31, 2018. All party states to this compact, that also were parties to the prior Nurse Licensure Compact, superseded by this compact, ("prior compact"), shall be deemed to have withdrawn from the prior compact within six (6) months after the effective date of this compact.

(b) Each party state to this compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact until such party state has withdrawn from the prior compact.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same. A party state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

(d) A party state's withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.

(e) Nothing contained in this compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

(f) This compact may be amended by the party states. No amendment to this compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

(g) Representatives of nonparty states to this compact shall be invited to participate in the activities of the commission, on a nonvoting basis, prior to the adoption of this compact by all states.

ARTICLE XI.

Construction and severability.

This compact shall be liberally construed so as to effectuate the purposes thereof.

The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held to be contrary to the Constitution of any party state, this compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

SOURCES: Laws, 2017, ch. 359, § 1, eff from and after July 20, 2017.

Editor's Note — Laws of 2017, ch. 359, §§ 6 and 7 provide:

"SECTION 6. The provisions of this act shall not take effect until a substantially similar act is enacted by at least twenty-six (26) states or on December 31, 2018, whichever occurs first, in accordance with Article X of the Nurse Licensure Compact, as enacted by Section 1 of this act [codified as Section 73-15-201]. If twenty-six (26) states enact a substantially similar act before December 31, 2018, the Mississippi Board of Nursing shall notify the House and Senate Legislative Services Offices within five (5) days after the 26th state has enacted the act.

"SECTION 7. This act shall take effect and be in force from and after July 1, 2017, subject to the provisions of Section 6 of this act."

On July 20, 2017, North Carolina became the 26th member state to sign legislation enacting the compact making the effective date of Laws of 2017, Chapter 359, July 20, 2017.

Cross References — cref: Practice of nursing defined, see § 73-15-5.

§ 73-15-202. "Head of the state licensing board" defined.

The term "head of the state licensing board" as used to define the compact administrator in Article VII(b)(1) of the Nurse Licensure Compact shall mean the Executive Director of the Mississippi Board of Nursing.

SOURCES: Laws, 2017, ch. 359, § 2, eff from and after July 20, 2017.

Editor's Note — Laws of 2017, ch. 359, §§ 6 and 7 provide:

"SECTION 6. The provisions of this act shall not take effect until a substantially similar act is enacted by at least twenty-six (26) states or on December 31, 2018, whichever occurs first, in accordance with Article X of the Nurse Licensure Compact, as enacted by Section 1 of this act [codified as Section 73-15-201]. If twenty-six (26) states enact a substantially similar act before December 31, 2018, the Mississippi Board of Nursing shall notify the House and Senate Legislative Services Offices within five (5) days after the 26th state has enacted the act.

"SECTION 7. This act shall take effect and be in force from and after July 1, 2017, subject to the provisions of Section 6 of this act."

On July 20, 2017, North Carolina became the 26th member state to sign legislation enacting the compact making the effective date of Laws of 2017, Chapter 359, July 20, 2017.

CHAPTER 17

Nursing Home Administrators

Sec.

73-17-1. Short title.
73-17-3. Licenses required of administrators.
73-17-5. Definitions.
73-17-7. Board of nursing home administrators; membership; appointment; organization.
73-17-9. Board of nursing home administrators; duties.
73-17-11. Licensing of administrators; qualifications; examination; reciprocity; fees [Repealed effective July 1, 2018].
73-17-13. Offenses; penalty.
73-17-15. Investigations; revocation of licenses; grounds; hearings; monetary penalty; injunctions prohibiting unauthorized acts; appeals.
73-17-17. Repealed.

§ 73-17-1. Short title.

This chapter shall be known and may be cited as the "Nursing Home Administrators Law of 1970."

SOURCES: Codes, 1942, § 8831-101; Laws, 1970, ch. 414, § 1; reenacted without change, Laws, 1983, ch. 390, § 1; reenacted, Laws, 1991, ch. 466, § 1, eff from and after passage (approved March 29, 1991).

Cross References — Institutions for the aged and infirm, see §§ 43-11-1 et seq.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

JUDICIAL DECISIONS

1. In general.

Neither Miss. Code Ann. § 43-11-1 et seq., nor Miss. Code Ann. § 73-17-1 et seq., expressly creates a duty by a licensee or an administrator to residents of a nursing home; nor does the Supreme Court of Mississippi hold that a breach of either licensing statute supports a negligence action filed by a third party. Howard v. Estate of Harper, 947 So. 2d 854 (Miss. 2006).

As nothing in the provisions of Miss. Code § 73-17-1 et seq., which describe the licensing requirements for a nursing home administrator, indicated legislative intent to create a private cause of action, non-diverse defendants could not be held liable in the nursing home resident's cause of action for statutory violations. Gray v. Beverly Enterprises-Mississippi, 261 F. Supp. 2d 652 (S.D. Miss. 2003), reversed by, remanded by 390 F.3d 400, 2004 U.S. App. LEXIS 23459 (5th Cir. Miss. 2004).

RESEARCH REFERENCES

Practice References. Takacs, Timothy L., A Guide to Elder Law Practice (Matthew Bender).

Long-Term Care Advocacy (Matthew Bender).

§ 73-17-3. Licenses required of administrators.

From and after July 1, 1970, it shall be unlawful for any person, partnership, association or corporation to act as the administrator, hereinafter defined, of a nursing home within this state without first obtaining a license as a nursing home administrator as provided for in this chapter, from the Mississippi State Board of Nursing Home Administrators.

SOURCES: Codes, 1942, § 8831-102; Laws, 1970, ch. 414, § 2; reenacted without change, Laws, 1983, ch. 390, § 2; reenacted, Laws, 1991, ch. 466, § 2, eff from and after passage (approved March 29, 1991).

Cross References — Administrator, nursing home defined, see § 73-17-5.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 29 et seq.

CJS. 53 C.J.S., Licenses §§ 58, 59 et seq.

Practice References. Takacs, Timothy L., A Guide to Elder Law Practice (Matthew Bender).

Long-Term Care Advocacy (Matthew Bender).

§ 73-17-5. Definitions.

As used in this chapter:

(a) The term "nursing home administrator" or "administrator" means any individual who is charged with the general administration of a nursing home, whether or not such individual has an ownership interest in such home and whether or not the functions and duties are shared with one or more individuals. "General administration of a nursing home" shall mean the duties of administrative performance and the making of day-to-day decisions involved in the planning, organizing, directing and/or controlling of a nursing home.

(b) The term "nursing home" means a place, either governmental or private, profit or nonprofit, which provides group living arrangements for four (4) or more persons who are unrelated to the operator and who are being provided food, shelter and personal care, and which employs at least one (1) registered nurse or licensed practical nurse. The term "nursing home" does not include hospitals, clinics, personal care homes and other institutions devoted primarily to providing medical services.

(c) "Board" means the Mississippi State Board of Nursing Home Administrators.

(d) "Person" means an individual or natural person, and does not include a firm, corporation, association, partnership, institution, public body, joint stock association or other group of individuals.

SOURCES: Codes, 1942, § 8831-103; Laws, 1970, ch. 414, § 3; reenacted and amended, Laws, 1983, ch. 390, § 3; reenacted, Laws, 1991, ch. 466, § 3, eff from and after passage (approved March 29, 1991).

RESEARCH REFERENCES

Practice References. Takacs, Timothy L., A Guide to Elder Law Practice (Matthew Bender).

Long-Term Care Advocacy (Matthew Bender).

§ 73-17-7. Board of nursing home administrators; membership; appointment; organization.

(1) There is hereby created the Mississippi State Board of Nursing Home Administrators. This board shall consist of seven (7) persons, in addition to the State Health Officer, or his designee, who shall be an ex-officio member without voting privilege, to be appointed by the Governor with the advice and consent of the Senate, each of whom shall be a qualified elector of the State of Mississippi; the members of said board shall be selected from a list of names submitted to the Governor as provided for hereinafter. In making initial appointments, three (3) members shall be appointed for a term of two (2) years; two (2) members shall be appointed for terms of three (3) years; and two (2) members for terms of four (4) years; and until their successors are appointed and qualified; thereafter, the terms of the members of the said board shall be for four (4) years and until their successors are appointed and qualified. In the event of the occurrence of a vacancy during the term of office of its incumbent, such vacancy shall be filled for the unexpired portion of the term. The members of this board shall include the following:

(a) One (1) educator with expertise in the field of health care and associated at the time of his appointment with an institution of higher learning within the state of Mississippi.

(b) A registered nurse.

(c) A licensed and practicing medical doctor or physician.

(d) Three (3) licensed and practicing nursing home administrators, no more than one (1) of whom shall be from the same Supreme Court district, who shall have had at least five (5) years' actual experience as a nursing home administrator.

(e) A hospital administrator.

Only the board members who are nursing home administrators may have a direct financial interest in any nursing home.

The Mississippi Nurses Association may submit a list of nominees for the appointment of the registered nurse member; the Mississippi State Medical Association may submit a list of nominees for the appointment of the medical doctor or physician member; the Mississippi Health Care Association and the Mississippi Health Facilities Association may submit lists of nominees for the appointment of the nursing home administrator members; and the Mississippi State Hospital Association may submit a list of nominees for the appointment of the hospital administrator member. Any such list of nominees shall be submitted at least thirty (30) days before the expiration of the term for each position.

Vacancies occurring on the board shall be filled by appointment by the Governor of individuals having the same prerequisite qualifications as required by this section for the vacancy being filled. The affected group may submit a list of nominees not more than thirty (30) days after a vacancy occurs.

(2) The board shall organize by selecting annually from its members a chairman and a vice-chairman, and may do all things necessary and convenient for carrying into effect the provisions of this chapter and may from time to time promulgate rules and regulations. Each member of the board shall receive a per diem as provided in Section 25-3-69, plus travel and reasonable necessary expenses incidental to the attendance at each meeting as provided in Section 25-3-41. Any member who shall not attend two (2) consecutive meetings of the board shall be subject to removal by the Governor. The chairman of the board shall notify the Governor in writing when any such member has failed to attend two (2) consecutive regular meetings.

(3) The board shall adopt a seal.

(4) The board is hereby authorized to acquire office space and to employ such personnel as shall be necessary in the performance of its duties, including a secretary-treasurer, who shall be bonded in an amount to be fixed by the board, but in no event less than the amount of Five Thousand Dollars ($5,000.00).

(5) All fees and any other monies received by the board shall be deposited in a special fund that is created in the State Treasury. The monies in the special fund shall be subject to all provisions of the state budget laws that are applicable to special fund agencies. Any interest earned on this special fund shall be credited by the State Treasurer to the fund and shall not be paid into the State General Fund.

SOURCES: Codes, 1942, § 8831-104; Laws, 1970, ch. 414, § 4; reenacted and amended, Laws, 1983, ch. 390, § 4; reenacted, Laws, 1991, ch. 466, § 4; Laws, 1998, ch. 585, § 1, eff from and after July 1, 1998.

Cross References — General powers and duties of governor, see § 7-1-5.
Executive officer of state board of health, see § 41-3-5.1.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 58, 59.

§ 73-17-9. Board of nursing home administrators; duties.

It shall be the function and duty of the board to:

(a) Develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(b) Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(c) Issue licenses to individuals determined, after the application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(d) Establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;

(e) Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards;

(f) Conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the state with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such; and

(g) To devise and implement an educational program designed to increase the professional proficiency of nursing home administrators and to assist otherwise qualified individuals to prepare for careers in nursing home administration.

SOURCES: Codes, 1942, § 8831-105; Laws, 1970, ch. 414, § 5; reenacted, Laws, 1983, ch. 390, § 5; reenacted, Laws, 1991, ch. 466, § 5, eff from and after passage (approved March 29, 1991).

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses § 58, 59.

§ 73-17-11. Licensing of administrators; qualifications; examination; reciprocity; fees [Repealed effective July 1, 2018].

(1) From and after July 1, 2011, in order to be eligible to be licensed as a nursing home administrator, an individual must submit evidence satisfactory to the board that he or she:

(a) Is at least twenty-one (21) years of age;

(b) Is of good moral character, including evidence of a criminal background check within the last six (6) months, under Section 43-11-13 and Section G.407.3 of the Minimum Standards for Institutions for the Aged or Infirm;

(c) Is in good health;

(d) Has satisfied at least one (1) of the following requirements for education and experience:

(i) Has sixty-four (64) hours of college work from an accredited institution and has worked in a supervisory capacity in a Mississippi-licensed nursing home for a minimum of two (2) years immediately before making application for the Administrator-in-Training Program established by board rule;

(ii) Has an associate degree from an accredited institution and has worked in a supervisory capacity in a Mississippi-licensed nursing home for a minimum of two (2) years immediately before making application for the Administrator-in-Training Program established by board rule;

(iii) Has a bachelor's degree in any other field of study from an accredited institution before making application for the Administrator-in-Training Program established by board rule; or

(iv) Has a bachelor's degree in health care administration or a health care related field or business from an accredited institution before making application for the Administrator-in-Training Program established by board rule;

(e) Has (i) completed a nursing home Administrator-in-Training Program and successfully completed the National Association of Long-Term Care Administrator Board (NAB) examination, or (ii) completed an Administrator-in-Training Program in Long-Term Care Administration from an academic institution during which time the institution held National Association of Long-Term Care Administrator Board (NAB) Program Approval through the Academic Approval process, to the satisfaction of the board;

(f) Has successfully passed the National Association of Long-Term Care Administrator Board (NAB) examination and the Mississippi State Board of Nursing Home Administrators examination to test his or her proficiency and basic knowledge in the area of nursing home administration. The board may establish the frequency of the offering of those examinations and the contents thereof; and

(g) Has met all of the requirements established by federal law.

(2) Reciprocity shall be extended to individuals holding licenses as nursing home administrators in other states, upon proper application and a finding on the part of the board that:

(a) The applicant possesses the basic qualifications listed in this chapter and in the rules and regulations adopted under federal law;

(b) The applicant has met all of the requirements established by federal law; and

(c) The standards for licensure in the other state are at least the substantial equivalent of those in this state, including education and experience, and the applicant has passed both the National Association of Long-Term Care Administrator Board (NAB) and the state exams.

The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(3) The board may prescribe appropriate fees for the taking of those examinations and for the issuance of licenses. Those fees shall be not more than the cost of the examinations and Five Hundred Dollars ($500.00) for the issuance of a license. However, the fee for an initial license may be prorated in proportion to the period of time from the date of issuance and the date of biennial license renewal prescribed in subsection (4). All licenses issued under this chapter shall be for a maximum period of two (2) years.

(4) Except as provided in Section 33-1-39, the board may renew licenses biennially upon the payment of a fee to be established by the board, which shall be not more than Five Hundred Dollars ($500.00), plus any administrative costs for late payment.

(5) Any person who is not licensed under this chapter on July 1, 2011, who makes application with the board on or before June 30, 2012, may qualify for a license under this chapter provided that on or before January 31, 2014, he or she demonstrates to the satisfaction of the board that he or she (a) meets the eligibility requirements for a nursing home administrator's license prescribed in this section as those requirements existed on June 30, 2011; (b) has successfully completed the Administrator-in-Training Program requirements existing on June 30, 2011; and (c) has paid all required fees for licensure.

(6) Current licensure by the Department of Mental Health under Section 41-4-7(r) as a mental health/intellectual disability program administrator shall exempt the licensee from the requirement of licensure as a nursing home administrator if the licensee is employed in the state mental health system as Administrator of Intermediate Care Facility or Facilities for Persons with Intellectual Disabilities (ICF/ID) no larger than sixteen (16) beds.

(7) This section shall stand repealed on July 1, 2018.

SOURCES: Codes, 1942, § 8831-106; Laws, 1970, ch. 414, § 6; reenacted and amended, Laws, 1983, ch. 390, § 6; Laws, 1984, ch. 361; Laws, 1988, ch. 424; reenacted, Laws, 1991, ch. 466, § 6; Laws, 1996, ch. 458, § 1; Laws, 1997, ch. 588, § 44; Laws, 2002, ch. 578, § 1; Laws, 2007, ch. 309, § 15; Laws, 2011, ch. 542, § 1; Laws, 2012, ch. 367, § 1; Laws, 2013, ch. 350, § 19; Laws, 2015, ch. 435, § 1, eff from and after July 1, 2015.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Licensing of institutions for the aged and infirm, see § 43-11-5.

Offenses and penalties, see § 73-17-13.

Revocation of license, hearings, appeals, see § 73-17-15.

Comparable Laws from other States — Alabama: Code of Ala. § 34-20-12.

Arkansas: A.C.A. § 20-10-406.

Florida: Fla. Stat. § 468.1705.

Georgia: O.C.G.A. § 43-27-7.

Louisiana: La. R.S. § 37:2508.

North Carolina: N.C. Gen. Stat. § 90-287.

South Carolina: S.C. Code Ann. § 40-35-45.
Tennessee: Tenn. Code Ann. § 63-16-109.

ATTORNEY GENERAL OPINIONS

While Board may recover expenses that are reasonably necessary in regulation of profession of nursing home administrator, words "the taking of such examinations" fix maximum amount that Board can charge applicant for cost of examination and fee for processing and issuance of license as nursing home administrator. Stebbins, June 4, 1990, A.G. Op. #90-0365.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

CJS. 53 C.J.S., Licenses §§ 58, 59 et seq.

§ 73-17-13. Offenses; penalty.

It shall be an offense punishable as a misdemeanor for an individual to (a) perform the duties of a nursing home administrator after July 1, 1970 without a valid license issued hereunder, (b) provide any false information, either written or oral, incident to either an application for a license hereunder, the renewal of a license hereunder, or a hearing held under the provisions of this chapter, (c) knowingly employ an unlicensed individual to perform the duties of a nursing home administrator. Upon conviction of a violation of this section, the penalty shall be a fine of not more than two hundred dollars ($200.00).

SOURCES: Codes, 1942, § 8831-107; Laws, 1970, ch. 414, § 7; reenacted and amended, Laws, 1983, ch. 390, § 7; reenacted, Laws, 1991, ch. 466, § 7, eff from and after passage (approved March 29, 1991).

Cross References — Injunctive relief prohibiting unauthorized acts of unlicensed person representing himself to be nursing home administrator, see § 73-17-15.

Injunctions to restrain illegal practice of profession, see § 73-51-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 43.

CJS. 53 C.J.S., Licenses §§ 70-72, 125 et seq.

§ 73-17-15. Investigations; revocation of licenses; grounds; hearings; monetary penalty; injunctions prohibiting unauthorized acts; appeals.

(1)(a) The board is authorized to investigate, either on the basis of complaints filed with it or on its own initiative, instances of suspected violations of this chapter of any nature, including, but not limited to: performing the duties of a nursing home administrator without a license; the providing of false information to the board either incident to an application for a license, incident to a hearing, or otherwise; maladministration; unethical conduct; incompetence; the conviction of a licensee of a felony; the misappropriation of funds; or of any other matter reflecting unfavorably upon the holder of a license under this chapter or an applicant therefor. On the basis of information developed during such an investigation, the board may (i) revoke, suspend, or refuse to renew any license issued by the board, (ii) deny an application for a license, or (iii) reprimand, place on probation, and/or take any other action in relation to a license, as the board may deem proper under the circumstances. Whenever the results of such an investigation are filed, the executive director of the board shall set a day for a hearing and shall notify the licensee that on the day fixed for hearing he or she may appear and show cause, if any, why his or her license should not be revoked, suspended, or other action taken in relation to his or her license. The notice shall be transmitted to the licensee by certified United States mail to the address of the licensee appearing of record with the board.

(b) In cases where violations of this chapter have been substantiated, the board may assess a monetary penalty for those reasonable costs that are expended by the board in the investigation and conduct of a proceeding for licensure revocation, suspension or restriction, including, but not limited to, the cost of process service, court reporters, expert witnesses and investigations.

(2) The board, upon finding and determining that any person represents himself or herself to be a nursing home administrator or performs any or all of the services, acts or duties of a nursing home administrator as defined in this chapter without a license, is authorized to petition the chancery court of the county in which the unauthorized acts have been, are being or may be committed, for writ or writs of injunction prohibiting the unauthorized acts. This provision is supplemental and in addition to the penal provisions set forth in Section 73-17-13.

(3) Any licensee whose license has been revoked or suspended, or who has been placed on probation or reprimanded after a contested hearing, may appeal that action of the board to the chancery court of the county in which the nursing home administrator is practicing, which appeal shall not be a de novo appeal but shall be determined upon an official transcript of the record of the contested hearing. Appeals to the chancery court shall be taken within ten (10) days from the date of the board's order and shall be taken, perfected, heard and determined either in termtime or in vacation, and the appeals shall be heard and disposed of promptly by the court. Appeals from the board shall be taken and perfected by the filing of a bond in the sum of Two Hundred Fifty Dollars ($250.00) with two (2) sureties, or with a surety company qualified to do business in Mississippi as surety, conditioned to pay the costs of the appeal. The bond shall be payable to the state and shall be approved by the clerk of the chancery court. The bond may be enforced in its name as other judicial bonds filed in the chancery court, and judgment may be entered upon those bonds and process and execution shall issue upon those judgments as provided by law in other cases. Upon approval of the bond by the clerk of the chancery court, the

clerk shall give notice to the board of the appeal from the decision of the board. It thereupon shall be the duty of the board through its duly authorized representative to promptly transmit to the clerk of the chancery court in which the appeal is pending a certified copy of the order of the board and all documents filed relating to the board's action against the licensee, together with a transcript of the testimony, both oral and documentary, introduced for consideration by the board both in support of and in opposition to the action, which appeal shall be docketed by the clerk and shall be determined by the court based upon the record. If there is an appeal, the appeal may, in the discretion of and on motion to the chancery court, act as a supersedeas. The chancery court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may, in the discretion of the chancellor, be tried in vacation.

(4) Appeals from the decision of the chancery court may be taken by either the board or the licensee to the Supreme Court as in the case of appeals generally from the chancery court to the Supreme Court.

(5) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in revoking a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Codes, 1942, § 8831-108; Laws, 1970, ch. 414, § 8; reenacted and amended, Laws, 1983, ch. 390, § 8; reenacted, Laws, 1991, ch. 466, § 8; Laws, 1996, ch. 507, § 44; Laws, 2011, ch. 542, § 2, eff from and after July 1, 2011.

Cross References — Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Offenses and penalties, see § 73-17-13.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 37 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency-to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-17-17. Repealed.

Repealed by Laws of 1991, ch. 466, § 9, eff from and after passage (approved March 29, 1991).

[Laws, 1979, ch. 301, § 29; Laws, 1979, ch. 357, § 15; Laws, 1983, ch. 390, § 9]

Editor's Note — Former § 73-17-17 provided for the repeal of §§ 73-17-1 through 73-17-15 as of December 31, 1991.

CHAPTER 19

Optometry and Optometrists

General Provisions 73-19-1
Contact Lenses 73-19-61
Use of Diagnostic Pharmaceutical Agents 73-19-101
Use of Therapeutic Pharmaceutical Agents 73-19-151

GENERAL PROVISIONS

Sec.
73-19-1. Practice of optometry defined.
73-19-3. Who may practice; examination and license.
73-19-5. Penalty for violation of chapter; immunity from civil or criminal liability.
73-19-7. Board of optometry; appointment; qualifications.
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73-19-37. Investigation of complaint; notice to accused optometrist.
73-19-39. Report of investigator; dismissal of complaint; formal complaint by board against optometrist; notice of action taken.
73-19-41. Hearing on formal complaint; decision.
73-19-43. Penalties; petition for reinstatement of license; disciplinary action not bar to criminal prosecution; payment and collection of monetary penalty.
73-19-45. Appeal of final action of board.

§ 73-19-1. Practice of optometry defined.

(1) The practice of optometry is defined to be the application of optical principles, through technical methods and devices in the examination of human eyes for the purpose of ascertaining departures from the normal, measuring their functional powers and adapting or prescribing optical accessories, including spectacles, contact lenses and low-vision devices, for the aid thereof, including, but not limited to, the use of computerized or automated refracting devices, lenses and prisms, vision therapy and low-vision rehabilitation therapy. The practice of optometry shall include the prescribing and use of therapeutic pharmaceutical agents by optometrists certified under Sections 73-19-153 through 73-19-165. The practice of optometry shall not include the performing of any invasive surgery including laser surgery, but shall not

preclude the removal of superficial foreign bodies from the eye or other noninvasive procedures. Nothing in this section or any other provision of law shall be construed to prohibit optometrists who have been certified under Sections 73-19-153 through 73-19-165 from providing postophthalmic surgical or clinical care and management with the advice and consultation of the operating or treating physician.

(2) Nothing in Laws, 2005, Chapter 404, shall be construed or interpreted to allow any optometrist to treat systemic diseases and/or conditions.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124a; 1930, § 5652; 1942, § 8832; Laws, 1920, ch. 217; reenacted, Laws, 1983, ch. 438, § 1; reenacted, Laws, 1991, ch. 303, § 1; Laws, 1994, ch. 573, § 10; Laws, 2005, ch. 404, § 1, eff from and after July 1, 2005.

Cross References — Annual privilege tax imposed on optometrist certified to use diagnostic pharmaceutical agents, see § 27-17-425.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

Regulation of use of diagnostic pharmaceutical agents in practice of optometry, see §§ 73-19-101 et seq.

Authority of optometrists to participate in medical service plans or hospital and medical service contracts for visual services to same extent as physicians, see § 83-41-203.

JUDICIAL DECISIONS

1. In general.

As long as a dispensing optician fabricates, fixes and inserts contact lenses in the eyes in accordance with the prescriptions of an examining optometrist, ophthalmologist, oculist or physician, and requires the patient to return to the examining optometrist, ophthalmologist, oculist or his physician in order that the writer of the prescription may determine whether the prescription has been properly filled and the contact lenses properly measured, fabricated and fitted, such optician is not engaged in the practice of optometry. State Bd. of Optometry v. Chester, 251 Miss. 250, 169 So. 2d 468 (1964).

The legislature has the power to define optometry as a profession and regulate it as such. Sears Roebuck & Co. v. State Bd. of Optometry, 213 Miss. 710, 57 So. 2d 726 (1952).

RESEARCH REFERENCES

ALR. Validity of governmental regulation of optometry. 22 A.L.R.2d 939.

Fitting of contact lenses as practice of optometry. 77 A.L.R.3d 817.

What constitutes practice of "optometry". 82 A.L.R.4th 816.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq.

16 Am. Jur. Proof of Facts 3d 49, Negligence of Optometrist.

23 Am. Jur. Proof of Facts 3d 1, Optician's Negligence: Proof that an Optician Negligently Dispensed an Optical Device.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 1-4, 15-23, 165-170, 172-174, 178, 179.

§ 73-19-3. Who may practice; examination and license.

It shall not be lawful for any person in this state to engage in the practice of optometry or to hold himself out as a practitioner of optometry, or attempt to determine by an examination of the eyes the kind of glasses needed by any person, or to hold himself out as able to examine the eyes of any person for the purpose of fitting the same with glasses, excepting those hereinafter exempted, unless he has first fulfilled the requirements of this chapter and has received a certificate of licensure from the state board of optometry created by this chapter, nor shall it be lawful for any person in this state to represent that he is the lawful holder of a certificate of licensure such as provided for in this chapter, when in fact he is not such lawful holder or to impersonate any licensed practitioner of optometry, or to fail to register the certificate as provided by law.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124b; 1930, § 5653; 1942, § 8833; Laws, 1920, ch. 217; reenacted, Laws, 1983, ch. 438, § 2; reenacted, Laws, 1991, ch. 303, § 2, eff from and after July 1, 1991.

Cross References — Board to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health care providers, see § 41-34-3.

Requirement that Board establish procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

Injunctions to restrain illegal practice of profession, see § 73-51-1.

JUDICIAL DECISIONS

1. In general.

The legislature has the power to define, license and regulate the practice of optometry. State Bd. of Optometry ex rel. Reese v. Orkin, 249 Miss. 430, 162 So. 2d 883 (1964).

It follows from this section [Code 1942, § 8833] that the board of optometry may determine what constitutes unprofessional and unethical conduct. State Bd. of Optometry ex rel. Reese v. Orkin, 249 Miss. 430, 162 So. 2d 883 (1964).

Where a corporation employed a retired physician at a monthly salary to examine eyes of its patients and prescribe spectacles for patients whose prescriptions were filled by the corporation, the corporation would be enjoined from engaging in the practice of optometry, despite the fact that under the statute a physician has the right to perform optometrical work. Busch Jewelry Co. v. State Bd. of Optometry, 216 Miss. 475, 62 So. 2d 770 (1953), cert. denied, 346 U.S. 830, 74 S. Ct. 34, 98 L. Ed. 354 (1953).

When a physician abandons the practice of medicine and unlawfully engages in the practice of optometry by becoming an employee of one not authorized to practice that profession, the physician and the employer are subject to the injunction at the instance of the state board of optometry. Busch Jewelry Co. v. State Bd. of Optometry, 216 Miss. 475, 62 So. 2d 770 (1953), cert. denied, 346 U.S. 830, 74 S. Ct. 34, 98 L. Ed. 354 (1953).

The Optometry Act has the effect of prohibiting corporations from practicing optometry through a licensed employee. Sears Roebuck & Co. v. State Bd. of Optometry, 213 Miss. 710, 57 So. 2d 726 (1952).

Failure of the legislature, in 1950, to pass bills, one of which prohibited corporate practice of optometry, is of no aid in interpretation of the Optometry Act, because it is impossible to say which of the proposed amendments resulted in the failure of the bills to pass. Sears Roebuck & Co. v. State Bd. of Optometry, 213 Miss. 710, 57 So. 2d 726 (1952).

RESEARCH REFERENCES

ALR. Validity of governmental regulation of optometry. 22 A.L.R.2d 939.

Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts without license as a separate or continuing offense. 99 A.L.R.2d 654.

What constitutes practice of "optometry". 82 A.L.R.4th 816.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq.

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Forms 21, 27.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers § 12.

§ 73-19-5. Penalty for violation of chapter; immunity from civil or criminal liability.

(1) Any person violating the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction for his first offense shall be fined not more than five hundred dollars ($500.00) at the discretion of the court, and upon conviction for a second or later offense shall be fined not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00) or imprisoned not less than six (6) months nor more than one (1) year, at the discretion of the court.

(2) Any entity, organization or person, including the board, any member of the board and its agents or employees, acting in good faith and without malice, who makes any report or information available to the board regarding violation of any of the provisions of Sections 73-19-1 through 73-19-111, or who assists in the organization, investigation or preparation of any such report or information or assists the board in carrying out any of its duties or functions provided by law, shall be immune from civil or criminal liability for such acts.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124c; 1930, § 5654; 1942, § 8834; Laws, 1920, ch. 217; reenacted and amended, Laws, 1983, ch. 438, § 3; reenacted, Laws, 1991, ch. 303, § 3, eff from and after July 1, 1991.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq., 106 et seq., 109 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 43-51.

§ 73-19-7. Board of optometry; appointment; qualifications.

The governor, with the advice and consent of the senate, shall appoint a state board of optometry, consisting of five (5) persons, citizens of Mississippi, each of whom shall be a nonmedical man or woman actually engaged in the practice of optometry for five (5) years next preceding his appointment. Within ninety (90) days after March 25, 1974, the governor shall appoint: one (1) member for a term of one (1) year, one (1) member for a term of two (2) years, one (1) member for a term of three (3) years, one (1) member for a term of four (4) years, and one (1) member for a term of five (5) years; and upon the expiration of all such terms their successors shall be appointed by the governor for a term of five (5) years. From and after July 1, 1983, the appointments to the board shall be made with one (1) member to be appointed from each of the congressional districts as existing on January 1, 1980; provided that the present members of the state board of optometry whose terms have not expired by July 1, 1983, shall continue to serve until their terms of office have expired. Each member shall remain in office after the expiration of his term until his successor shall be duly appointed and qualified.

No person so appointed shall be a stockholder in or a member of the faculty or of the board of trustees of any school of optometry, or serve to exceed two (2) five-year terms.

Vacancies on said board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of names submitted by the Mississippi Optometric Association consisting of three (3) of its members, or by appointment of any qualified member of the association.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124d; 1930, § 5655; 1942, § 8835; Laws, 1920, ch. 217; Laws, 1956, ch. 305, § 1; Laws, 1974, ch. 426, § 1; reenacted and amended, Laws, 1983, ch. 438, § 4; reenacted, Laws, 1991, ch. 303, § 4, eff from and after July 1, 1991.

Cross References — General powers and duties of governor, see § 7-1-5.

Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 30-39.

§ 73-19-9. Officers of board; meetings; rules and regulations.

The State Board of Optometry shall organize by the election from its members a president and a secretary, who shall hold their respective offices for one (1) year.

It shall hold regular meetings for examination, beginning on the second week of January and July of each year, and additional meetings at such times and places as the board shall determine, said additional meetings not to exceed ten (10) meeting days annually, but the July meeting shall be held in the City of Jackson.

A majority of the board shall constitute a quorum, but a less number may adjourn from time to time.

The board shall make such rules and regulations as may be necessary to carry out the provisions of this chapter; however, the board shall not adopt any rule or regulation or impose any requirement regarding the licensing of optometrists that conflicts with the prohibitions in Section 73-49-3.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124e; 1930, § 5656; 1942, § 8836; Laws, 1920, ch. 217; reenacted, Laws, 1983, ch. 438, § 5; reenacted, Laws, 1991, ch. 303, § 5; Laws, 2015, ch. 461, § 5, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first paragraph by substituting "from its members a president and a secretary" for "from its members of a president and a secretary." The Joint Committee ratified the correction at its August 5, 2016, meeting.

Cross References — Board to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health care providers, see § 41-34-3.

Requirement that Board establish procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

JUDICIAL DECISIONS

1. In general.

The legislature has the power to define, license and regulate the practice of optometry. State Bd. of Optometry ex rel. Reese v. Orkin, 249 Miss. 430, 162 So. 2d 883 (1964).

If the board, in the adoption of rules, acts within the scope of the powers vested in it, courts are powerless to interfere. State Bd. of Optometry ex rel. Reese v. Orkin, 249 Miss. 430, 162 So. 2d 883 (1964).

In determining whether rules adopted by the board are reasonable and proper, the courts will inquire only whether they are supported by substantial evidence, or are arbitrary and capricious, or beyond the power of the board to make, or whether they affect any constitutional right of those affected. State Bd. of Optometry ex rel. Reese v. Orkin, 249 Miss. 430, 162 So. 2d 883 (1964).

It is within the power of the board of optometry to adopt rules prohibiting displays by optometrists of ophthalmic materials where they can be seen from the street, and the delegation of authority to lay persons to perform on patients any act requiring the service of professional knowledge and judgment; but it may not adopt a rule forbidding optometrists to fit hearing aids. State Bd. of Optometry ex rel. Reese v. Orkin, 249 Miss. 430, 162 So. 2d 883 (1964).

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 30-39.

§ 73-19-11. Secretary of board; bond required.

Before entering upon the discharge of the duties of his office the secretary of the state board of optometry shall give a bond to the state, to be approved by the board, in the sum of two thousand dollars conditioned for the faithful discharge of the duties of his office. The premium for such bond to be paid from the funds paid into the state treasury by the secretary of the board.

Such bond, with the approval of the board and oath of office indorsed thereon, shall be deposited with the secretary of state and kept in his office. Each month all moneys received by the secretary shall be paid by him into the state treasury to the credit of a fund for the use of the state board of optometry.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124f; 1930, § 5657; 1942, § 8837; Laws, 1920, ch. 217; reenacted, Laws, 1983, ch. 438, § 6; reenacted, Laws, 1991, ch. 303, § 6, eff from and after July 1, 1991.

Cross References — Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

§ 73-19-13. Compensation of secretary and members; how paid.

Each member of the state board of optometry shall be entitled to receive per diem as authorized under Section 25-3-69 in addition to all actual, necessary expenses incurred in the discharge of official duties, including mileage as authorized by law for state officials and employees.

The secretary shall receive an annual salary, to be fixed by the board, and his necessary expenses incurred in the discharge of his official duties. The state board of optometry may engage the services of an attorney to assist it in the discharge of its duties on terms to be fixed by the board.

The compensation and expenses of the secretary, attorney and members of the board, and the expenses of the board necessary in carrying out the provisions of this chapter, shall be paid from the fund in the state treasury for use of the board on the requisition signed by the president and secretary of the board and the warrant of the auditor of the state; provided, however, that said compensation and expenses shall not exceed the amount paid into the state treasury under the provisions of this chapter; and provided further, that all expenditures from such special fund shall be authorized by the legislature and shall be subject to all applicable provisions of the state budget law.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124g; 1930, § 5658; 1942, § 8838; Laws, 1920, ch. 217; Laws, 1956, ch. 305, § 2; Laws, 1974, ch. 426, § 2; reenacted and amended, Laws, 1983, ch. 438, § 7; reenacted, Laws, 1991, ch. 303, § 7, eff from and after July 1, 1991.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Traveling expenses of state officers and employees, see § 25-3-41.

Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

§ 73-19-15. Official seal; records required.

The state board of optometry shall have an official seal and shall keep a record of its proceedings, a register of persons registered as optometrists and register licenses by it revoked.

Its records shall be open to public inspection, and it shall keep on file all examination papers for a period of ninety (90) days after each examination. A transcript of an entry in such records certified by the secretary under the seal of the board, shall be evidence of the facts therein stated. The board shall annually, on or before January 1 make a report to the governor of all its official acts during the preceding year, and of its receipts and disbursements, and a full and complete report of the conditions of optometry in this state.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124h; 1930, § 5659; 1942, § 8839; Laws, 1920, ch. 217; reenacted, Laws, 1983, ch. 438, § 8; reenacted, Laws, 1991, ch. 303, § 8, eff from and after July 1, 1991.

Cross References — Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

§ 73-19-17. Examination; qualifications.

Any person over the age of twenty-one (21) years, of good moral character, and who has graduated from a high school or preparatory school affiliated with and recognized by a state university, and who has graduated from a reputable school or college of optometry, shall be entitled to stand the examination for license to practice optometry in Mississippi. The examining Board of Optometry shall keep on file a list of schools or colleges of optometry which are recognized by said board. The examination to practice optometry shall consist of tests in practical, theoretical and physiological optics, in theoretical and practical optometry and in anatomy and physiology of the eye and in pathology as applied to optometry. The State Board of Optometry shall not examine or certify any optometrist in any therapeutic procedures unless the optometrist has successfully completed the proper didactic education and supervised clinical training taught by an institution accredited by a regional or professional accreditation organization that is recognized or approved by the Council on Postsecondary Accreditation of the United States Department of Education, or its successor, and approved by the State Board of Optometry with the advice and consultation of the designated members of the State Board of Medical Licensure and the State Board of Pharmacy.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124i; 1930, § 5660; 1942, § 8840; Laws, 1920, ch. 217; Laws, 1956, ch. 305, § 3; reenacted, Laws, 1983, ch. 438, § 9; reenacted, Laws, 1991, ch. 303, § 9; Laws, 1994, ch. 573, § 11, eff from and after July 1, 1994.

Cross References — Board to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health care providers, see § 41-34-3.

Requirement that Board establish procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

Examination to practice optometry, see § 73-19-19.

Fees, see § 73-19-21.

Additional educational requirements and examination for optometrists to be certified to use diagnostic pharmaceutical agents in practice, see § 73-19-105.

Additional educational requirements and examination for optometrists to be certified to use therapeutic pharmaceutical agents in practice, see § 73-19-153.

RESEARCH REFERENCES

ALR. Validity of governmental regulation of optometry. 22 A.L.R.2d 939.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq., 48 et seq., 62 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 24-29.

§ 73-19-19. Examination; effect of failure; certificate of licensure.

Every person desiring to be licensed as in this chapter provided, shall file with the secretary an application, verified by oath, setting forth the facts which entitle the applicant to examination and licensure under the provisions of this chapter. The said board shall hold at least two (2) examinations each year. In case of failure at any examination the applicant, after the expiration of six (6) months and within two (2) years, shall have the privilege of a second examination by the board without the payment of an additional fee. In the case of any applicant who shall fail the examination twice, said applicant shall not be permitted to again take the examination until he has completed a further course of study outlined by the board and paid the examination fee therefor. Every applicant who shall pass the examination, and who shall otherwise comply with the provisions of this chapter, shall receive from the said board under its seal a certificate of licensure entitling him to practice optometry in this state, which certificate shall be duly registered in a record book to be properly kept by the secretary of the board for that purpose, which shall be open to public inspection, and a duly certified copy of said record shall be received as evidence in all courts of this state in the trial of any case.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124j; 1930, § 5661; 1942, § 8841; Laws, 1920, ch. 217; Laws, 1956, ch. 305, § 4; reenacted, Laws, 1983, ch. 438, § 10; reenacted, Laws, 1991, ch. 303, § 10; Laws, 1997, ch. 588, § 45, eff from and after July 1, 1997.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

Fees, see § 73-19-21.

Refusal or revocation of license, disciplinary action — see § 73-19-23.

Additional educational requirements and examination for optometrists to be certified to use diagnostic pharmaceutical agents in practice, see § 73-19-105.

Additional educational requirements and examination for optometrists to be certified to use therapeutic pharmaceutical agents in practice, see § 73-19-153.

§ 73-19-21. Fees.

Except as provided in Section 33-1-39, the board shall charge the following fees for examination, registrations and renewals of certificates: The sum of not more than Two Hundred Dollars ($200.00) for an examination of an applicant who is a resident of Mississippi and not more than Three Hundred Dollars ($300.00) for a nonresident of Mississippi to cover the additional expenses of checking references, character and other statements contained in the application. Every registered optometrist who desires to continue the practice of optometry shall, annually, on or before January 1, pay to the secretary of the board a renewal registration fee of not more than Four Hundred Dollars ($400.00) for which he shall receive a renewal of his certificate. The board, in its discretion, may set the renewal registration fee at different amounts for registered optometrists, for registered optometrists certified to use diagnostic pharmaceutical agents, and for registered optometrists certified to use diagnostic and therapeutic pharmaceutical agents, not to exceed the maximum amount prescribed in this section.

In case of neglect to pay the renewal registration fee specified in this section, the board may revoke the certificate and the holder thereof may be reinstated by complying with the conditions specified in this chapter. But no certificate or permit shall be revoked without giving sixty (60) days' notice to the delinquent, who, within that period shall have the right of renewal of the certificate on payment of the renewal fee with a penalty of not more than Fifteen Dollars ($15.00). Retirement from practice for a period not exceeding five (5) years shall not deprive the holder of the certificate of the right to renew his certificate on the payment of all lapsed fees.

The board shall adopt a seal and certificate of suitable design and shall conduct its examination at Jackson, in this state. Its permanent records shall be kept in the office of the secretary, which records shall be open to public inspection.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124k; 1930, § 5662; 1942, § 8842; Laws, 1920, ch. 217; Laws, 1942, ch. 326; Laws, 1956, ch. 305, § 5; Laws, 1970, ch. 405, § 1; Laws, 1978, ch. 416, § 1; reenacted and amended, Laws, 1983,

ch. 438, § 11; Laws, 1991, ch. 303, § 11; Laws, 1995, ch. 561, § 1; Laws, 2007, ch. 309, § 16; Laws, 2007, ch. 395, § 1, eff from and after July 1, 2007.

Joint Legislative Committee Note — Section 16 of ch. 309, Laws of 2007, effective upon passage (approved March 8, 2007), amended this section. Section 1 of ch. 395, Laws of 2007, effective July 1, 2007 (approved March 15, 2007), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the June 26, 2007, meeting of the Committee.

Cross References — Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

§ 73-19-23. License refused or revoked; disciplinary action.

(1) The board shall refuse to grant a certificate of licensure to any applicant and may cancel, revoke or suspend the operation of any certificate by it granted for any or all of the following reasons: unprofessional and unethical conduct or the conviction of a crime involving moral turpitude, habitual intemperance in the use of ardent spirits, or stimulants, narcotics, or any other substance that impairs the intellect and judgment to such an extent as to incapacitate one for the performance of the duties of an optometrist. The certificate of licensure of any person can be revoked for violating any section of this chapter.

(2) The board shall further be authorized to take disciplinary action against a licensee for any unlawful acts, which shall include violations of regulations promulgated by the board, as well as the following acts:

(a) Fraud or misrepresentation in applying for or procuring an optometric license or in connection with applying for or procuring periodic renewal of an optometric license.

(b) Cheating on or attempting to subvert the optometric licensing examination(s).

(c) The conviction of a felony in this state or any other jurisdiction, or the entry of a guilty or nolo contendere plea to a felony charge.

(d) The conviction of a felony as defined by federal law, or the entry of a guilty or nolo contendere plea to a felony charge.

(e) Conduct likely to deceive, defraud or harm the public.

(f) Making a false or misleading statement regarding his or her skill or the efficacy or value of the medicine, device, treatment or remedy prescribed by him or her or used at his or her direction in the treatment of any disease or other condition.

(g) Willfully or negligently violating the confidentiality between doctor and patient, except as required by law.

(h) Negligence or gross incompetence in the practice of optometry as determined by the board.

(i) Being found to be a person with mental illness or with an intellectual disability by any court of competent jurisdiction.

(j) The use of any false, fraudulent, deceptive or misleading statement in any document connected with the practice of optometry.

(k) Aiding or abetting the practice of optometry by an unlicensed, incompetent or impaired person.

(*l*) Commission of any act of sexual abuse, misconduct or exploitation related to the licensee's practice of optometry.

(m) Being addicted or habituated to a drug or intoxicant.

(n) Violating any state or federal law or regulation relating to a drug legally classified as a controlled substance.

(o) Obtaining any fee by fraud, deceit or misrepresentation.

(p) Disciplinary action of another state or jurisdiction against a licensee or other authorization to practice optometry based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this chapter, a certified copy of the record of the action taken by the other state or jurisdiction being conclusive evidence thereof.

(q) Failure to report to the board the relocation of his or her office in or out of the jurisdiction, or to furnish floor plans as required by regulation.

(r) Violation of any provision(s) of the Optometry Practice Act or the rules and regulations of the board or of an action, stipulation or agreement of the board.

(s) To advertise in a manner that tends to deceive, mislead or defraud the public.

(t) The designation of any person licensed under this chapter, other than by the terms "optometrist," "Doctor of Optometry" or "O.D.," which through June 30, 2020, shall include any violation(s) of the provisions of Sections 41-121-1 through 41-121-9 relating to deceptive advertisement by health care practitioners.

(u) To knowingly submit or cause to be submitted any misleading, deceptive or fraudulent representation on a claim form, bill or statement.

(v) To practice or attempt to practice optometry while his or her license is suspended.

(3) Any person who is holder of a certificate of licensure or who is an applicant for examination for a certificate of licensure, against whom is preferred any charges, shall be furnished by the board with a copy of the complaint and shall have a hearing in Jackson, Mississippi, before the board, at which hearing he may be represented by counsel. At the hearing, witnesses may be examined for and against the accused respecting those charges, and the hearing orders or appeals will be conducted according to the procedure now provided in Section 73-25-27. The suspension of a certificate of licensure by reason of the use of stimulants or narcotics may be removed when the holder of the certificate has been adjudged by the board to be cured and capable of practicing optometry.

(4) In addition to the reasons specified in subsections (1) and (2) of this section, the board shall be authorized to suspend the license of any licensee for

being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124l; 1930, § 5663; 1942, § 8843; Laws, 1920, ch. 217; Laws, 1956, ch. 305, § 6; reenacted, Laws, 1983, ch. 438, § 12; Laws, 1991, ch. 303, § 12; Laws, 1996, ch. 507, § 45; Laws, 2008, ch. 442, § 20; Laws, 2010, ch. 476, § 75; Laws, 2012, ch. 409, § 13; Laws, 2016, ch. 419, § 10, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment substituted "June 30, 2020" for "June 30, 2016" in (2)(t).

Cross References — Board to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health care providers, see § 41-34-3.

Requirement that Board establish procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

Complaints against optometrists, see §§ 73-19-33 through 73-19-41.

Penalties, see § 73-19-43.

Appeal, see § 73-19-45.

Power of state board of optometry to suspend or revoke optometrist's license for violation of law regulating use of pharmaceutical agents in practice, see § 73-19-111.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

ALR. Liability of optometrist or optician for malpractice. 51 A.L.R.3d 1273.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq., 65 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Forms 12, 16, 21, 23, 26.

23 Am. Jur. Proof of Facts 3d 1, Optician's Negligence: Proof that an Optician Negligently Dispensed an Optical Device.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 52, 63 et seq.

§ 73-19-25. Certificates of other states; when and how recognized.

An applicant for a certificate of licensure who has been examined by the state board of another state which, through reciprocity, similarly accredits the holder of a certificate issued by the board of this state to the full privileges of practice within such state, on the payment of a fee of not more than Fifty Dollars ($50.00) to the board and on filing in the office of the board a true and attested copy of the the license, certified by the president or secretary of the state board issuing the same, and showing also that the standard requirements adopted and enforced by the board are equal to that provided by this state, may, without further examination, receive a certificate of licensure, provided that such applicant has not previously failed at an examination held by the board of this state. The issuance of a certificate of licensure by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124m; 1930, § 5664; 1942, § 8844; Laws, 1920, ch. 217; Laws, 1956, ch. 305, § 7; reenacted and amended, Laws, 1983, ch. 438, § 13; reenacted, Laws, 1991, ch. 303, § 13; Laws, 2013, ch. 350, § 20, eff from and after July 1, 2013.

Cross References — Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

Comparable Laws from other States — Alabama: Code of Ala. § 34-22-21.
Arkansas: A.C.A. § 17-90-302.
Georgia: O.C.G.A. § 43-30-7.
Louisiana: La. R.S. § 37:1054.
North Carolina: N.C. Gen. Stat. § 90-118.5.
South Carolina: S.C. Code Ann. § 40-37-245.

§ 73-19-27. License does not entitle to treat with drugs or medicines; use of diagnostic or therapeutic pharmaceutical agents.

Nothing in this chapter shall be construed as conferring on the holder of any certificate of licensure issued by said board the title of oculist, ophthalmologist, or any other word or abbreviation indicating that he is engaged in the practice of medicine or surgery, or the treatment or the diagnosis of diseases of, or injuries to, the human eye, or the right to use drugs or medicines in any forms for the treatment or examination of the human eye. However, optometrists who have been certified by the board under the provisions of Sections 73-19-101 through 73-19-109 may use diagnostic pharmaceutical agents in the practice of optometry in accordance with the requirements of Sections 73-19-101 through 73-19-109, and optometrists who have been certified by the board under the provisions of Sections 73-19-153 through 73-19-165 may use therapeutic pharmaceutical agents in the practice of optometry in accordance with the requirements of Sections 73-19-153 through 73-19-165. Nothing contained in Chapter 303, Laws of 1991, shall be construed as expanding the scope of practice of a licensed optometrist beyond that authorized prior to July 1, 1991.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124n; 1930, § 5665; 1942, § 8845; Laws, 1920, ch. 217; Laws, 1982, ch. 353, § 7; reenacted, Laws, 1983, ch. 438, § 14; Laws, 1985, ch. 374, § 1; Laws, 1991, ch. 303, § 14; Laws, 1994, ch. 573, § 12, eff from and after July 1, 1994.

Cross References — Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

Duty of optometrist to refer certain patients to licensed physician, see § 73-19-107.

JUDICIAL DECISIONS

1. In general.

As long as a dispensing optician fabricates, fixes and inserts contact lenses in the eyes in accordance with the prescriptions of an examining optometrist, ophthalmologist, oculist or physician, and requires the patient to return to the examining optometrist, ophthalmologist, oculist or his physician in order that the writer of the prescription may determine whether the prescription has been properly filled and the contact lenses properly measured, fabricated and fitted, such optician is not engaged in the practice of optometry. State Bd. of Optometry v. Chester, 251 Miss. 250, 169 So. 2d 468 (1964).

RESEARCH REFERENCES

ALR. Validity of governmental regulations of optometry. 22 A.L.R.2d 939.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 15-23.

§ 73-19-29. Physicians, druggists and merchants may sell spectacles.

The provisions of this chapter shall not apply to physicians or surgeons practicing under authority of licenses issued under the laws of this state for the practice of medicine or surgery. And provided that this chapter shall not prohibit merchants and druggists who are actually engaged in business in this state from selling and assisting purchasers in fitting spectacles and eye glasses in their place of business at time of sale.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124o; 1930, § 5666; 1942, § 8846; Laws, 1920, ch. 217; reenacted, Laws, 1983, ch. 438, § 15; reenacted, Laws, 1991, ch. 303, § 15, eff from and after July 1, 1991.

Cross References — Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

JUDICIAL DECISIONS

1. In general.

The exemption provided in this section [Code 1942, § 8846] is confined to those who sell glasses and fit them in their place of business at the time of sale and does not include corporations who undertake to employ licensed optometrists to perform optometrical work. Sears Roebuck & Co. v. State Bd. of Optometry, 213 Miss. 710, 57 So. 2d 726 (1952).

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers § 119.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 15-23.

§ 73-19-31. Repealed.

Repealed by Laws of 2005, ch. 404, § 12 effective July 1, 2005.

[Laws, 1979, ch. 301, § 36; Laws, 1979, ch. 357, § 16; Laws, 1983, ch. 438, § 16; Laws, 1991, ch. 303, § 23; Laws, 1997, ch. 382, § 1; Laws, 2001, ch. 516, § 1, eff from and after June 30, 2001.]

Editor's Note — Former § 73-19-51 was the automatic repealer for §§ 73-19-1 through 73-19-29 and 73-19-33 through 73-19-45.

§ 73-19-33. Complaints against optometrists.

Complaints, irrespective of source, touching upon the professional conduct or conduct evincing unfitness for the practice of optometry made against optometrists licensed in this state, that may be received by or that may come to the attention of any member of the board, shall be referred by the president of the board to an impartial member of the board for preliminary investigation and further action as may be appropriate. The complaint must be in writing and signed by the person making the complaint or charge and shall contain the street address of the complaining party and each witness.

SOURCES: Laws, 1991, ch. 303, § 16, eff from and after July 1, 1991.

Cross References — Processing of complaints, see § 73-19-35.
Investigation of complaints, see § 73-19-37.
Dismissal of complaint or formal complaint, see § 73-19-39.
Hearing, see § 73-19-41.
Penalties, see § 73-19-43.
Appeal, see § 73-19-45.

RESEARCH REFERENCES

ALR. Validity of governmental regulation of optometry. 22 A.L.R.2d 939.

Liability of optometrist or optician for malpractice. 51 A.L.R.3d 1273.

What constitutes practice of "optometry". 82 A.L.R.4th 816.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq., 65 et seq., 251.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 15-23.

§ 73-19-35. Processing of complaints.

When any complaint or charge touching upon the professional conduct or conduct evincing unfitness for the practice of optometry against any optometrist subject to discipline hereunder is referred to a member of the board for investigation, the board member shall take the following action:

(a) Cause the complaint or charge to be filed and docketed with the secretary of the board; and

(b) Refer the complaint to the board investigator for further investigation and report.

SOURCES: Laws, 1991, ch. 303, § 17, eff from and after July 1, 1991.

Cross References — Investigation of complaints, see § 73-19-37.
Dismissal of complaint or formal complaint, see § 73-19-39.
Hearing, see § 73-19-41.
Penalties, see § 73-19-43.
Appeal, see § 73-19-45.

RESEARCH REFERENCES

ALR. Validity of governmental regulation of optometry. 22 A.L.R.2d 939.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq., 65 et seq., 251.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 15-23.

§ 73-19-37. Investigation of complaint; notice to accused optometrist.

The board investigator shall immediately investigate the complaint; and upon completion of his investigation he shall inform the accused optometrist that a complaint has been filed against him and that he is under investigation, advise the accused optometrist of the general nature of the charges, furnish him a copy of the complaint and any evidence supporting it, and afford the accused optometrist an opportunity to respond. Communications and notices to the accused optometrist shall be transmitted by registered or certified mail, postage prepaid, to the last known residence or business address of the licensee.

SOURCES: Laws, 1991, ch. 303, § 18, eff from and after July 1, 1991.

Cross References — Processing of complaints, see § 73-19-35.
Dismissal of complaint or formal complaint, see § 73-19-39.
Hearing, see § 73-19-41.

Penalties, see § 73-19-43.
Appeal, see § 73-19-45.

RESEARCH REFERENCES

ALR. Validity of governmental regulation of optometry. 22 A.L.R.2d 939.

What constitutes practice of "optometry". 82 A.L.R.4th 816.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq., 65 et seq., 251.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 15-23.

§ 73-19-39. Report of investigator; dismissal of complaint; formal complaint by board against optometrist; notice of action taken.

After completion of his investigation, the board investigator shall make a report of his findings and recommendations to the member of the board designated to investigate the matter. After receipt of the investigator's report, the board member shall take the following action:

(a) If upon review of the complaint, board investigator's report and any written response by the accused optometrist, the board member determines that there is not reasonable ground to believe that the accused optometrist has been guilty of unprofessional conduct or conduct evincing unfitness for the practice of optometry, the board member shall present his findings and recommendations to the board at the next regular board meeting. The board may dismiss the complaint or may prepare a formal complaint against the licensee as provided in Section 73-19-41, Mississippi Code of 1972. In the event of dismissal, the person filing the complaint and the accused optometrist shall be given written notice of the board's determination.

(b) If the board member determines there is reasonable cause to believe the accused optometrist is guilty of such conduct, which, if proven, would warrant suspension for a definite or an indefinite period or license revocation, the board member shall request the board to prepare and file a formal complaint against the accused optometrist. The board may dismiss the complaint or may prepare a formal complaint against the licensee as provided in Section 73-19-41, Mississippi Code of 1972. In the event of a dismissal, the person filing the complaint and the accused optometrist shall be given written notice of the board's determination.

SOURCES: Laws, 1991, ch. 303, § 19, eff from and after July 1, 1991.

Cross References — Processing of complaint, see § 73-19-35.
Investigation of complaint, see § 73-19-37.
Hearing, see § 73-19-41.
Penalties, see § 73-19-43.
Appeal, see § 73-19-45.

RESEARCH REFERENCES

ALR. Validity of governmental regulation of optometry. 22 A.L.R.2d 939.

What constitutes practice of "optometry". 82 A.L.R.4th 816.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq., 65 et seq., 251.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 15-23.

§ 73-19-41. Hearing on formal complaint; decision.

(1) The board shall fix a time and place for any formal complaint hearing and shall cause a written notice specifying the offense or offenses for which the licensee is charged and notice of the time and place of the hearing to be served upon the licensee at least twenty (20) days prior to the hearing date. Such notice may be served by mailing a copy thereof by certified mail, postage prepaid, to the last known residence or business address of the licensee.

(2) The board is hereby authorized and empowered to issue subpoenas for the attendance of witnesses and the production of books and papers at such hearing. Process issued by the board shall extend to all parts of the state and shall be served by any person designated by the board for such service.

(3) The accused shall have the right to appear either personally or by counsel or both to produce witnesses or evidence in his behalf, to cross-examine witnesses and to have subpoenas issued by the board.

(4) At the hearing, the board shall administer oaths as may be necessary for the proper conduct of the hearing. All hearings shall be conducted by the board, with the exception of the investigating board member who shall not participate in the hearing. The board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be based upon sufficient evidence to sustain it. All proceedings shall be transcribed by a court reporter.

(5) Where, in any proceeding before the board, any witness fails or refuses to attend upon a subpoena issued by the board, refuses to testify, or refuses to produce any books and papers the production of which is called for by a subpoena, the attendance of such witness, the giving of his testimony or the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(6) The board shall, within sixty (60) days after conclusion of the hearing, reduce its decision to writing and forward an attested true copy thereof to the last known residence or business address of such licensee by way of United States first class, certified mail, postage prepaid.

SOURCES: Laws, 1991, ch. 303, § 20, eff from and after July 1, 1991.

Cross References — Processing of complaint, see § 73-19-35.

Investigation of complaint, see § 73-19-37.

Dismissal of complaint or formal complaint, see § 73-19-39.

Authority of board to dismiss complaint or file formal complaint as provided in this section, see § 73-19-39.

Penalties, see § 73-19-43.

Appeal, see § 73-19-45.

RESEARCH REFERENCES

ALR. Validity of governmental regulation of optometry. 22 A.L.R.2d 939.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq., 65 et seq., 251.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 15-23.

§ 73-19-43. Penalties; petition for reinstatement of license; disciplinary action not bar to criminal prosecution; payment and collection of monetary penalty.

(1) Upon finding of the existence of grounds for discipline of any person holding a license, seeking a license, or seeking to renew a license under the provisions of this chapter, the board may impose one or more of the following penalties:

(a) Suspension of the offender's license for a term to be determined by the board;

(b) Revocation of the offender's license;

(c) Restriction of the offender's license to prohibit the offender from performing certain acts or from engaging in the practice of optometry in a particular manner for a term to be determined by the board;

(d) Imposition of a monetary penalty as follows:

(i) For the first violation, a monetary penalty of not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00) for each violation;

(ii) For the second violation and subsequent violations, a monetary penalty of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) for each violation;

(e) Refusal to renew offender's license;

(f) Placement of the offender on probation and supervision by the board for a period to be determined by the board;

(g) Public or private reprimand.

(2) Any person whose license has been suspended, revoked or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right to petition the board at reasonable intervals for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the board. Upon investigation and hearing, the board may, in its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications. The procedure for the reinstatement of a license that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(3) Nothing herein shall be construed as barring criminal prosecutions for violation of this chapter where such violations are deemed as criminal offenses in other statutes of this state or of the United States.

(4) A monetary penalty assessed and levied under this section shall be paid to the board by the licensee upon the expiration of the period allowed for appeal of such penalties under Section 73-19-45, Mississippi Code of 1972, or may be paid sooner if the licensee elects. Money collected by the board under this section shall be deposited to the credit of the General Fund of the State Treasury.

(5) When payment of a monetary penalty assessed and levied by the board against a licensee in accordance with this section is not paid by the licensee when due under this section, the board shall have the power to institute and maintain proceedings in its name for enforcement of payment in the Chancery Court of the First Judicial District of Hinds County, Mississippi. When such proceedings are instituted, the board shall certify its order to the chancery court and the matter shall thereupon be heard in due course by the court, which shall review the order and make its determination thereon. The hearing on the matter may, in the discretion of the chancellor, be tried in vacation. If the chancellor finds no errors on the face of the board's order, the board shall have a judgment for the amount due which shall be enforceable as all other judgments.

SOURCES: Laws, 1991, ch. 303, § 21; Laws, 1996, ch. 507, § 46, eff from and after July 1, 1996.

Cross References — Appeal, see § 73-19-45.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

ALR. Validity of governmental regulation of optometry. 22 A.L.R.2d 939.

Liability of optometrist or optician for malpractice. 51 A.L.R.3d 1273.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq., 65 et seq., 251.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 15-23.

§ 73-19-45. Appeal of final action of board.

(1) The right to appeal from a final action of the board is hereby granted. Such appeal shall be to the chancery court of the county of residence of the licensee and shall be on the record made, including a verbatim transcript of the testimony at the hearing. The appeal shall be taken within thirty (30) days after notice of the action of the board. The appeal shall be perfected upon filing notice of the appeal with the chancery court and by the prepayment of all costs, including the cost of the preparation of the record of the proceedings by the board, and the filing of a bond in the sum of Two Hundred Dollars ($200.00),

conditioned that if the action of the board be affirmed by the chancery court, the licensee will pay the costs of the appeal and the action in the chancery court. A copy of the Notice of Appeal shall be served upon board counsel.

(2) If there is an appeal, such appeal may, in the discretion of and on motion to the chancery court, act as a supersedeas. The chancery court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may, in the discretion of the chancellor, be tried in vacation. The scope of review of the chancery court shall be limited to a review of the record made before the board to determine if the action of the board is unlawful for the reason that it was (a) not supported by substantial evidence, (b) arbitrary or capricious, (c) beyond the power of the board to make, or (d) in violation of some statutory or constitutional right of the appellant. The decision of the chancery court may be appealed to the Supreme Court in the manner provided by the rules of the Supreme Court.

(3) Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SOURCES: Laws, 1991, ch. 303, § 22; Laws, 1996, ch. 507, § 47, eff from and after July 1, 1996.

Cross References — Payment of monetary penalty due upon expiration of period allowed for appeal under this section, see § 73-19-43.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

ALR. Validity of governmental regulation of optometry. 22 A.L.R.2d 939.

What constitutes practice of "optometry". 82 A.L.R.4th 816.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq., 65 et seq., 251.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 15-23.

CONTACT LENSES

SEC.
73-19-61. Persons authorized to dispense, fit, or prescribe contact lenses or other appliances touching cornea.
73-19-63. Penalties.
73-19-65. Immunity from liability for persons assisting with investigation or prosecution.

§ 73-19-61. Persons authorized to dispense, fit, or prescribe contact lenses or other appliances touching cornea.

It shall be unlawful for any person, persons, corporation, proprietorship, partnership, or any entity other than a licensed optometrist or licensed ophthalmologist to dispense, fit, or prescribe to the public contact lenses, including FDA-approved medicated contact lenses, or any medical appliance having direct contact with the cornea of the eye. An optical dispenser may, however, fill the written contact lens prescription of a licensed optometrist or licensed ophthalmologist, provided that the optical dispenser directs the wearer of the lenses back to the prescribing optometrist or ophthalmologist for verification of the proper fit of the lenses. This section does not authorize a licensed optometrist to prescribe, fit, sell or dispense contact lenses medicated with a drug that is outside of the licensed optometrist's scope of practice.

SOURCES: Laws, 1987, ch. 402, § 1; Laws, 2010, ch. 417, § 1, eff from and after July 1, 2010.

Cross References — Penalties for violation of this section, see § 73-19-63.

Immunity from liability for persons assisting with investigation or prosecution, see § 73-19-65.

RESEARCH REFERENCES

ALR. Fitting of contact lenses as practice of optometry. 77 A.L.R.3d 817.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 7, 30 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 9, 10.

§ 73-19-63. Penalties.

Any person violating the provisions of Section 73-19-61 shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars ($1000.00) and/or imprisoned not less than six (6) months nor more than one (1) year at the discretion of the court.

SOURCES: Laws, 1987, ch. 402, § 2, eff from and after July 1, 1987.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 73-19-65. Immunity from liability for persons assisting with investigation or prosecution.

Any person, organization or entity acting in good faith and without malice, who makes any report or provides any information to any law enforcement agency regarding any violation of Section 73-19-61 or who assists in the investigation or prosecution of any violation of Section 73-19-61 shall be immune from civil or criminal liability for such acts.

SOURCES: Laws, 1987, ch. 402, § 3, eff from and after July 1, 1987.

Cross References — Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

USE OF DIAGNOSTIC PHARMACEUTICAL AGENTS

Sec.
73-19-101. Use of pharmaceutical agents.
73-19-103. Duties of state boards of optometry, medical licensure and pharmacy; records.
73-19-105. Educational requirements; examination.
73-19-107. Referral of patient to licensed physician.
73-19-109. Pharmacist dispensing diagnostic pharmaceutical agents.
73-19-111. Penalty for violating provisions regulating use of pharmaceutical agents.

§ 73-19-101. Use of pharmaceutical agents.

No person engaged in the practice of optometry in the State of Mississippi shall use pharmaceutical agents in the practice of optometry unless he has been certified to use diagnostic pharmaceutical agents under the provisions of Sections 73-19-103 through 73-19-109, or unless he has been certified to use therapeutic pharmaceutical agents under the provisions of Sections 73-19-153 through 73-19-165.

SOURCES: Laws, 1982, ch. 353, § 1; reenacted, Laws, 1985, ch. 374, § 2; Laws, 1994, ch. 573, § 13, eff from and after July 1, 1994.

Cross References — Annual privilege tax imposed on optometrist certified to use diagnostic pharmaceutical agents, see § 27-17-425.

Definition of practice of optometry, see § 73-19-1.

Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

License not entitling optometrist to treat patients with drugs or medicines, except as certified to use diagnostic pharmaceutical agents in practice, see § 73-19-27.

Penalty for violating provisions regulating use of pharmaceutical agents, see § 73-19-111.

Use of therapeutic pharmaceutical agents, see §§ 73-19-151 et seq.

RESEARCH REFERENCES

ALR. What constitutes practice of "optometry." 88 A.L.R.2d 1290.

Fitting of contact lenses as practice of optometry. 77 A.L.R.3d 817.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers §§ 7, 30 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 1-4, 165-170, 172-174, 178, 179.

§ 73-19-103. Duties of state boards of optometry, medical licensure and pharmacy; records.

(1) The State Board of Medical Licensure and the State Board of Pharmacy each shall, within thirty (30) days after July 1, 1982, and annually thereafter, designate one (1) member from its board, on the minutes of each respective board, to advise and consult with the State Board of Optometry on the matters specified in Sections 73-19-103 through 73-19-109. The State Board of Optometry, the State Board of Medical Licensure, and the State Board of Pharmacy shall work in cooperation with each other to the greatest extent possible in implementing the provisions of Sections 73-19-101 through 73-19-111.

(2) The State Board of Optometry, with the advice and consultation of the designated members of the State Board of Medical Licensure and the State Board of Pharmacy, shall prescribe additional educational requirements and additional theoretical and practical examinations for optometrists licensed to practice optometry in the State of Mississippi and applicants for a license to practice optometry in the State of Mississippi to become certified to use certain specified pharmaceutical agents as diagnostic agents only. The authorized use of such diagnostic pharmaceutical agents shall be specifically limited to those pharmaceutical agents which, when applied topically to the eye, are utilized in a prescribed manner to assess ocular conditions for the purpose of referring any deviation from the normal to a physician for treatment. The pharmaceutical agents so authorized shall be limited to the following classes: anesthetics, mydriatics, cycloplegics, dyes and over-the-counter drugs. Such agents shall be utilized in the practice of optometry only by the optometrist and shall not be dispensed to any patient. The limitations of this subsection shall not apply to those optometrists certified to use therapeutic pharmaceutical agents under the provisions of Sections 73-19-153 through 73-19-165.

(3) Any optometrist utilizing a diagnostic pharmaceutical agent so authorized shall maintain accurate and current medical records concerning the procurement and use of such pharmaceutical agents in the same form and manner as is required for physicians, in addition to any records required to be kept or otherwise necessary to keep in the practice of optometry. All of the medical records concerning the procurement and use of such pharmaceutical agents shall be available for inspection at any time by representatives of the State Board of Optometry, and all such records shall be made available for inspection to the State Board of Medical Licensure and the State Board of Pharmacy through their designated members.

SOURCES: Laws, 1982, ch. 353, § 2; reenacted, Laws, 1985, ch. 374, § 3; Laws, 1994, ch. 573, § 14, eff from and after July 1, 1994.

Cross References — Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

State board of optometry, generally, see §§ 73-19-7 et seq.

License not entitling optometrist to treat patients with drugs or medicines, except as certified to use diagnostic pharmaceutical agents in practice, see § 73-19-27.

Provisions that optometrist or applicant for license to practice optometry must submit evidence of completion of educational requirements and satisfactorily pass examination before being certified to use diagnostic pharmaceutical agents, see § 73-19-105.

Authorization of licensed pharmacists to dispense diagnostic pharmaceutical agents to optometrists certified to use them in practice, see § 73-19-109.

Penalty for violating provisions regulating use of pharmaceutical agents, see § 73-19-111.

Use of therapeutic pharmaceutical agents, see §§ 73-19-151 et seq.

State board of medical licensure, generally, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers §§ 7, 30 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 15-18, 22, 23, 40-42.

§ 73-19-105. Educational requirements; examination.

(1) Before any optometrist or any applicant for a license to practice optometry may be certified to use diagnostic pharmaceutical agents as authorized in Section 73-19-103, he shall submit satisfactory evidence to the State Board of Optometry that he has successfully completed a course or courses in pharmacology as they apply to optometry, with particular emphasis on the topical application of diagnostic pharmaceutical agents to the eye, and any additional educational requirements prescribed by the State Board of Optometry with the advice and consultation of the designated members of the State Board of Medical Licensure and the State Board of Pharmacy. Such course or courses in pharmacology and any additional educational requirements prescribed shall be completed at an institution accredited by a regional professional accreditation organization that is recognized or approved by the Council on Postsecondary Accreditation or the United States Department of Education or its successors and approved by the State Board of Optometry with the advice and consultation of the designated members of the State Board of Medical Licensure and the State Board of Pharmacy.

(2) Upon the successful completion of all specified educational requirements, any optometrist or any applicant for a license to practice optometry who desires certification to use diagnostic pharmaceutical agents as authorized in Section 73-19-103 shall satisfactorily pass an examination administered by the State Board of Optometry. Such examination shall be prepared by the State Board of Optometry with the advice and consultation of the designated members of the State Board of Medical Licensure and the State Board of Pharmacy. No credit for such examination may be given unless the applicant for certification has achieved a score equal to or greater than a score which is generally accepted in medical schools as a passing score for the same subject areas of the examination, as determined by the State Board of Optometry. All examinations and scores shall be made available for inspection to the State

Board of Medical Licensure and the State Board of Pharmacy through their designated members.

(3) The additional educational requirements necessary to become certified to use diagnostic pharmaceutical agents may be completed simultaneously with the educational requirements necessary to become licensed to practice optometry or may be completed after the person is licensed to practice optometry. Any applicant for a license to practice optometry who has met the additional educational requirements for certification to use diagnostic pharmaceutical agents may take the examination to become licensed to practice optometry and the examination to become certified to use diagnostic pharmaceutical agents at the same time.

SOURCES: Laws, 1982, ch. 353, § 3; reenacted, Laws, 1985, ch. 374, § 4, eff from and after July 1, 1985.

Cross References — Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

State board of optometry, generally, see §§ 73-19-7 et seq.

Educational requirements for licensure as optometrist, see § 73-19-17.

Examination for licensure as optometrist, see §§ 73-19-17, 73-19-19.

License not entitling optometrist to treat patients with drugs or medicines, except as certified to use diagnostic pharmaceutical agents in practice, see § 73-19-27.

Additional educational requirements and examination for optometrists to be certified to use diagnostic pharmaceutical agents in practice, see § 73-19-105.

Additional education requirements and examination for optometrists to be certified to use therapeutic-pharmaceutical agents in practice, see § 73-19-153.

Use of therapeutic pharmaceutical agents, see §§ 73-19-151 et seq.

State board of medical licensure, generally, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers §§ 7, 30 et seq., §§ 53 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 15-18 et seq.

§ 73-19-107. Referral of patient to licensed physician.

Any optometrist who encounters a patient in the course of his practice who is, in the exercise of the optometrist's professional judgment, suffering from any symptom or combination of symptoms indicating an underlying pathologic or physiologic disorder or disfunction necessitating care and treatment beyond the scope of the optometrist's professional limitations, shall immediately refer such patient to a licensed physician for such additional treatment as may be needed.

SOURCES: Laws, 1982, ch. 353, § 4; reenacted, Laws, 1985, ch. 374, § 5, eff from and after July 1, 1985.

Cross References — Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

License not entitling optometrist to treat patients with drugs or medicines, except as certified to use diagnostic pharmaceutical agents in practice, see § 73-19-27.

Use of therapeutic pharmaceutical agents, see §§ 73-19-151 et seq.

RESEARCH REFERENCES

ALR. Liability of optometrist or optician for malpractice. 51 A.L.R.3d 1273.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers §§ 7, 30 et seq., 215.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers § 40-42.

§ 73-19-109. Pharmacist dispensing diagnostic pharmaceutical agents.

Any pharmacist licensed under the laws of the State of Mississippi is hereby authorized to dispense those diagnostic pharmaceutical agents specified in Section 73-19-103 to any optometrist certified by the State Board of Optometry to use such agents.

SOURCES: Laws, 1982, ch. 353, § 5; reenacted, Laws, 1985, ch. 374, § 6, eff from and after July 1, 1985.

Cross References — Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

License not entitling optometrist to treat patients with drugs or medicines, except as certified to use diagnostic pharmaceutical agents in practice, see § 73-19-27.

Use of therapeutic pharmaceutical agents, see §§ 73-19-151 et seq.

Licensure of pharmacists, see §§ 73-21-71 et seq.

§ 73-19-111. Penalty for violating provisions regulating use of pharmaceutical agents.

(1) Any optometrist violating any provision of Sections 73-19-101 through 73-19-109 shall, upon conviction for a first offense, be guilty of a misdemeanor and shall be fined not more than Five Hundred Dollars ($500.00) at the discretion of the court, and upon conviction for a second or later offense shall be fined not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or imprisoned not less than six (6) months nor more than one (1) year at the discretion of the court. Such actions shall be brought by the State Board of Optometry. However, this shall not be construed to prohibit the State Board of Medical Licensure, the State Board of Pharmacy, or any affected individual from bringing actions against any optometrist violating any provision of Sections 73-19-101 through 73-19-109.

(2) In addition to the penalties prescribed in subsection (1), the State Board of Optometry is authorized to suspend or revoke the optometrist's license to practice optometry for violating any provision of Sections 73-19-101

through 73-19-109. Any optometrist may appeal any such suspension or revocation of his license by the State Board of Optometry to the chancery court of the county of his residence in the manner prescribed by law.

SOURCES: Laws, 1982, ch. 353, § 6; reenacted, Laws, 1985, ch. 374, § 7, eff from and after July 1, 1985.

Cross References — Immunity from civil or criminal liability for persons who make any report or information regarding violation of §§ 73-19-1 through 73-19-111, see § 73-19-5.

State board of optometry, generally, see §§ 73-19-7 et seq.

Cancellation, revocation or suspension of optometrists' licenses, generally, see § 73-19-23.

Use of therapeutic pharmaceutical agents, see §§ 73-19-151 et seq.

State board of medical licensure, generally, see §§ 73-43-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Disqualification, for bias or interest, of member of occupation or profession sitting in license revocation proceeding. 97 A.L.R.2d 1210.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers §§ 7, 30 et seq., 65 et seq., 109 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 43, 52-61, 63.

USE OF THERAPEUTIC PHARMACEUTICAL AGENTS

SEC.
73-19-151. Use of therapeutic pharmaceutical agents in practice of optometry.
73-19-153. Educational and clinical training requirements for certification; examination.
73-19-155. Rules and regulations requiring satisfactory completion of educational and clinical training.
73-19-157. Purposes for which therapeutic pharmaceutical agents may be used; types of agents that may be prescribed.
73-19-159. Standard of care in prescription and use of agents, and diagnosis and treatment.
73-19-161. Referral of patient to licensed physician when patient not responding to treatment.
73-19-163. Certificate of certification to be displayed.
73-19-165. Licensed pharmacist authorized to fill and dispense therapeutic pharmaceutical agents.

§ 73-19-151. Use of therapeutic pharmaceutical agents in practice of optometry.

(1) Persons lawfully engaged in the practice of optometry in the State of Mississippi may prescribe and use therapeutic pharmaceutical agents in the practice of optometry after being authorized to use such agents under the provisions of Section 73-19-153.

(2) The designated members of the State Board of Medical Licensure and the State Board of Pharmacy provided for in Section 73-19-103 shall advise and consult with the State Board of Optometry on matters specified in Sections 73-19-153 through 73-19-165.

SOURCES: Laws, 1994, ch. 573, § 2, eff from and after July 1, 1994.

Cross References — Practice of optometry defined, see § 73-19-1.

Examination requirements and qualifications for practice of optometry, see § 73-19-17.

Prohibition against treating with drugs or medicines, except as provided in this section, see § 73-19-27.

Use of diagnostic pharmaceutical agents, see §§ 73-19-101 et seq.

§ 73-19-153. Educational and clinical training requirements for certification; examination.

(1) Any optometrist certified to use diagnostic pharmaceutical agents as provided in Section 73-19-105 also may be certified to use therapeutic pharmaceutical agents when he has satisfactorily completed the following:

(a) A course consisting of a minimum of sixty-four (64) hours of didactic education as defined by rule or regulation of the State Board of Optometry with the advice and consultation of the designated members of the State Board of Medical Licensure and the State Board of Pharmacy, with particular emphasis on the examination, diagnosis and treatment of conditions of the eye and adnexa. Such course shall be provided by an institution accredited by a regional or professional accreditation organization that is recognized or approved by the Council on Postsecondary Accreditation of the United States Department of Education, or its successor, and approved by the State Board of Optometry with the advice and consultation of the designated members of the State Board of Medical Licensure and the State Board of Pharmacy; and

(b) A minimum of eighty (80) hours of supervised clinical training as it applies to optometry with particular emphasis on the examination, diagnosis and treatment of conditions of the human eye and adnexa, by an institution accredited by a regional or professional accreditation organization that is recognized or approved by the Council on Postsecondary Accreditation of the United States Department of Education, or its successor, and approved by the State Board of Optometry with the advice and consultation of the designated members of the State Board of Medical Licensure and the State Board of Pharmacy; and

(c) Such other requirements as may be determined by the board.

(2) Upon the successful completion of all specified educational and clinical requirements provided by an institution accredited by a regional or professional accreditation organization that is recognized or approved by the Council on Postsecondary Accreditation of the United States Department of Education, or its successor, and approved by the State Board of Optometry with the advice and consultation of the designated members of the State Board of Medical

Licensure and the State Board of Pharmacy, any optometrist who desires certification to prescribe and use therapeutic pharmaceutical agents shall satisfactorily pass a written examination approved by the State Board of Optometry, with the advice and consultation of the designated members of the State Board of Medical Licensure and the State Board of Pharmacy. The applicant for certification must achieve a score equal to or greater than a score that is generally accepted in medical schools as a passing score for the same subject areas of examination, as determined by the State Board of Optometry. All examinations and scores shall be made available for inspection to the State Board of Medical Licensure and the State Board of Pharmacy through their designated members.

SOURCES: Laws, 1994, ch. 573, § 3, eff from and after July 1, 1994.

Cross References — Practice of optometry defined, see § 73-19-1.

Educational requirements for licensure as optometrist, see § 73-19-17.

Examination for licensure as optometrists, see § 73-19-17, 73-19-19.

Prohibition against treating with drugs or medicines, except as provided in this section, see § 73-19-27.

Use of diagnostic pharmaceutical agents, see §§ 73-19-101 et seq.

Additional educational requirements and examination for optometrists to be certified to use diagnostic pharmaceutical agents in practice, see § 73-19-105.

Additional educational requirements, and examination for optometrists to be certified to use therapeutic pharmaceutical agents in practice, see § 73-19-153.

§ 73-19-155. Rules and regulations requiring satisfactory completion of educational and clinical training.

(1) Within thirty (30) days after July 1, 1994, and annually thereafter, the State Board of Optometry with the advice and consultation of the designated members of the State Board of Medical Licensure and the State Board of Pharmacy, shall develop rules and regulations requiring the satisfactory completion of the educational requirements, clinical training, and examinations required under the provisions of Sections 73-19-153 through 73-19-165, regarding those optometrists seeking to become certified to prescribe and use therapeutic pharmaceutical agents.

(2) Any optometrist using therapeutic pharmaceutical agents shall maintain accurate and current medical records concerning the procurement and use of such agents in the same form and manner as required for medical doctors, in addition to any records required to be kept or otherwise necessary to keep in the practice of optometry. All of these medical records shall be available for inspection at any time by representatives of the State Board of Optometry, and all such records shall be made available for inspection to the State Board of Medical Licensure and the State Board of Pharmacy through their designated members.

SOURCES: Laws, 1994, ch. 573, § 4, eff from and after July 1, 1994.

Cross References — Practice of optometry defined, see § 73-19-1.

Examination requirements and qualifications for practice of optometry, see § 73-19-17.

Prohibition against treating with drugs or medicines, except as provided in this section, see § 73-19-27.

Use of diagnostic pharmaceutical agents, see §§ 73-19-101 et seq.

§ 73-19-157. Purposes for which therapeutic pharmaceutical agents may be used; types of agents that may be prescribed.

Any optometrist certified to prescribe and use therapeutic pharmaceutical agents under Sections 73-19-153 through 73-19-165 is authorized to examine, diagnose, manage and treat visual defects, abnormal conditions and diseases of the human eye or eyelids, including:

(a) Topical pharmaceutical agents;

(b) Over-the-counter medications;

(c) The administration and prescribing of all noninjectible medications listed in the current annual edition of the "Physicians Desk Reference for Ophthalmic Medicines" which are rational and appropriate for the examination, diagnosis, management or treatment of visual defects, abnormal conditions or diseases of the eye and/or eyelids for proper optometric practice;

(d) The administration and prescribing of oral pharmaceutical agents to treat glaucoma; oral antibiotic medications; oral nonsteroidal anti-inflammatory (NSAIDS) medications; over-the-counter allergy medications; and oral medications to treat viral infections, all of which must be used solely for the rational and appropriate examination, diagnosis, management or treatment of visual defects, abnormal conditions of the eye and/or eyelids for proper optometric practice; and

(e) The administration of an auto injection or epi-pen to counteract anaphylactic reaction, followed by immediate referral of the patient to the nearest emergency medical facility.

SOURCES: Laws, 1994, ch. 573, § 5; Laws, 2005, ch. 404, § 2, eff from and after July 1, 2005.

Cross References — Practice of optometry defined, see § 73-19-1.

Examination requirements and qualifications for practice of optometry, see § 73-19-17.

Prohibition against treating with drugs or medicines, except as provided in this section, see § 73-19-27.

Use of diagnostic pharmaceutical agents, see §§ 73-19-101 et seq.

§ 73-19-159. Standard of care in prescription and use of agents, and diagnosis and treatment.

Any optometrist who is certified to prescribe and use therapeutic pharmaceutical agents shall be held to the same standard of care in the prescription and use of such agents, and in diagnosis and treatment, as is common to a licensed medical doctor.

SOURCES: Laws, 1994, ch. 573, § 6, eff from and after July 1, 1994.

Cross References — Practice of optometry defined, see § 73-19-1.

Examination requirements and qualifications for practice of optometry, see § 73-19-17.

Prohibition against treating with drugs or medicines, except as provided in this section, see § 73-19-27.

Use of diagnostic pharmaceutical agents, see §§ 73-19-101 et seq.

§ 73-19-161. Referral of patient to licensed physician when patient not responding to treatment.

If a patient of any optometrist who is certified to prescribe and use therapeutic pharmaceutical agents is not responding to the prescribed treatment within the normal response time for the condition being treated, in the optometrist's professional judgment, the optometrist shall immediately refer such patient to a licensed physician for such additional treatment as may be needed.

SOURCES: Laws, 1994, ch. 573, § 7, eff from and after July 1, 1994.

Cross References — Practice of optometry defined, see § 73-19-1.

Examination requirements and qualifications for practice of optometry, see § 73-19-17.

Prohibition against treating with drugs or medicines, except as provided in this section, see § 73-19-27.

Use of diagnostic pharmaceutical agents, see §§ 73-19-101 et seq.

§ 73-19-163. Certificate of certification to be displayed.

Any optometrist who is certified to prescribe and use therapeutic pharmaceutical agents shall be provided by the State Board of Optometry a certificate reflecting such certification, and such certification shall be prominently displayed in the optometrist's office.

SOURCES: Laws, 1994, ch. 573, § 8, eff from and after July 1, 1994.

Cross References — Practice of optometry defined, see § 73-19-1.

Examination requirements and qualifications for practice of optometry, see § 73-19-17.

Prohibition against treating with drugs or medicines, except as provided in this section, see § 73-19-27.

Use of diagnostic pharmaceutical agents, see §§ 73-19-101 et seq.

§ 73-19-165. Licensed pharmacist authorized to fill and dispense therapeutic pharmaceutical agents.

Any pharmacist licensed under the laws of the State of Mississippi is authorized to fill and dispense to patients those therapeutic pharmaceutical agents specified in Section 73-19-157 for any optometrist certified by the State Board of Optometry to use such agents.

SOURCES: Laws, 1994, ch. 573, § 9; Laws, 2005, ch. 404, § 3, eff from and after July 1, 2005.

Cross References — Practice of optometry defined, see § 73-19-1.

Examination requirements and qualifications for practice of optometry, see § 73-19-17.

Prohibition against treating with drugs or medicines, except as provided in this section, see § 73-19-27.

Use of diagnostic pharmaceutical agents, see §§ 73-19-101 et seq.

CHAPTER 21

Pharmacists

General Provisions. [Repealed]
Mississippi Pharmacy Practice Act 73-21-69
Pharmacy Benefit Prompt Pay Act 73-21-151
Pharmacy Audit Integrity Act 73-21-175

GENERAL PROVISIONS [REPEALED]

Sec.
73-21-1 through 73-21-67. Repealed.

§§ 73-21-1 through 73-21-67. Repealed.

Repealed by Laws of 1983, ch. 414, § 29, eff from and after July 1, 1983.

§ 73-21-1. [Codes, 1892, § 3229; 1906, § 3667; Hemingway's 1917, § 6338; 1930, § 5825; 1942, § 8847; Laws, 1896, p. 82; Laws, 1916, ch. 114; Laws, 1934, ch. 338]

§ 73-21-3. [Codes, Hemingway's 1917, § 6339; 1930, § 5826; 1942, § 8848; Laws, 1916, ch. 114; Laws, 1920, ch. 316; Laws, 1934, ch. 338; 1942, ch. 324; Laws, 1948, ch. 371; Laws, 1954, ch. 293, § 1; Laws, 1960, ch. 355; Laws, 1966, ch. 472, § 1; Laws, 1972, ch. 417, § 1; Laws, 1981, ch. 422, § 1]

§ 73-21-5. [Codes, Hemingway's 1917, § 6340; 1930, § 5827; 1942, § 8849; Laws, 1916, ch. 114; Laws, 1920, ch. 316; Laws, 1954, ch. 293, § 2]

§ 73-21-7. [Codes, Hemingway's 1917, § 6341; 1930, § 5828; 1942, § 8850; Laws, 1916, ch. 114]

§ 73-21-9. [Codes, Hemingway's 1917, § 6342; 1930, § 5829; 1942, § 8851; Laws, 1916, ch. 114; Laws, 1922, ch. 251; Laws, 1934, ch. 338; Laws, 1966, ch. 473, § 1; Laws, 1968, ch. 446; Laws, 1974, ch. 348]

§ 73-21-11. [Codes, 1892, § 3242; 1906, § 3680; Hemingway's 1917, § 6355; 1930, § 5841; 1942, § 8872; Laws, 1916, ch. 114]

§ 73-21-13. [Codes, 1942, § 8852; Laws, 1934, ch. 338; Laws, 1979, ch. 483, § 6; Laws, 1980, ch. 399, § 1]

§ 73-21-15. [Codes, 1892, § 3240; 1906, § 3678; Hemingway's 1917, § 6353; 1930, § 5839; 1942, § 8863; Laws, 1916, ch. 114; Laws, 1934, ch. 338]

§ 73-21-17. [Codes, 1942, § 8853; Laws, 1934, ch. 338; Laws, 1948, ch. 372, § 1; Laws, 1952, ch. 327; Laws, 1960, ch. 356; Laws, 1968, ch. 447, § 1; Laws, 1971, ch. 472, § 1; Laws, 1974, ch. 403; Laws, 1978, ch. 329, § 1; Laws, 1981, ch. 408, § 1]

§ 73-21-19. [Codes, 1892, § 3231; 1906, § 3669; Hemingway's 1917, § 6343; 1930, § 5830; 1942, § 8854; Laws, 1916, ch. 114]

§ 73-21-21. [Codes, 1892, § 3241; 1906, § 3679; Hemingway's 1917, § 6354; 1930, § 5840; 1942, § 8871; Laws, 1916, ch. 114]

§ 73-21-23. [Codes, 1892, § 3233; 1906, § 3671; Hemingway's 1917, § 6345; 1930, § 5831; 1942, § 8855; Laws, 1916, ch. 114]

§ 73-21-25. [Codes, Hemingway's 1917, § 6346; 1930, § 5832; 1942, § 8856; Laws, 1916, ch. 114; Laws, 1922, ch. 251; Laws, 1934, ch. 338; Laws, 1968, ch. 448, § 1]

§ 73-21-27. [Codes, Hemingway's 1917, § 6347; 1930, § 5833; 1942, § 8857; Laws, 1916, ch. 114; Laws, 1932, ch. 277; Laws, 1934, ch. 338]

§ 73-21-29. [Codes, 1892, § 3235; 1906, § 3673; Hemingway's 1917, § 6348; 1930, § 5834; 1942, § 8858; Laws, 1916, ch. 114; Laws, 1934, ch. 338; Laws, 1968, ch. 449, § 1]

§ 73-21-31. [Codes, 1892, § 3237; 1906, § 3674; Hemingway's 1917, § 6349; 1930, § 5835; 1942, § 8859; Laws, 1916, ch. 114]

§ 73-21-33. [Codes, 1892, § 3238; 1906, § 3675; Hemingway's 1917, § 6350; 1930, § 5836; 1942, § 8860; Laws, 1916, ch. 114]

§ 73-21-35. [Codes, 1906, § 3678; Hemingway's 1917, § 6351; 1930, § 5837; 1942, § 8861; Laws, 1916, ch. 114]

§ 73-21-37. [Codes, 1892, § 3239; 1906, § 3677; Hemingway's 1917, § 6352; 1930, § 5838; 1942, § 8862; Laws, 1916, ch. 114]

§ 73-21-39. [Codes, 1942, § 8862.5; Laws, 1964, ch. 439, §§ 1, 2; Laws, 1980, ch. 399, § 2]

§ 73-21-41. [Codes, 1942, § 8864; Laws, 1934, ch. 338; Laws, 1962, ch. 408, § 1; Laws, 1966, ch. 474, § 1; Laws, 1972, ch. 417, § 2; Laws, 1975, ch. 303; Laws, 1976, ch. 398; Laws, 1979, ch. 483, § 7]

§ 73-21-43. [Codes, 1942, § 8864.5; Laws, 1966, ch. 481, § 1]

§ 73-21-45. [Codes, 1942, § 8865; Laws, 1932, ch. 276]

§ 73-21-47. [Codes, 1942, § 8866; Laws, 1932, ch. 315]

§ 73-21-49. [Codes, 1942, § 8869; Laws, 1932, ch. 315]

§ 73-21-51. [Codes, 1942, § 8867; Laws, 1932, ch. 315]

§ 73-21-53. [Codes, 1942, § 8868; Laws, 1932, ch. 315]

§ 73-21-55. [Codes, 1942, § 8870; Laws, 1932, ch. 315; Laws, 1948, ch. 396, § 1]

§ 73-21-57. [Codes, Hemingway's 1917, § 6356; 1930, § 5842; 1942, § 8873; Laws, 1916, ch. 114; Laws, 1968, ch. 450, § 1]

§ 73-21-59. [Codes, Hemingway's 1917, § 6357; 1930, § 5843; 1942, § 8874; Laws, 1916, ch. 114; Laws, 1962, ch. 409; Laws, 1968, ch. 451, § 1]

§ 73-21-61. [Codes, Hemingway's 1917, § 6358; 1930, § 5844; 1942, § 8875; Laws, 1916, ch. 114; Laws, 1968, ch. 375, § 1]

§ 73-21-63. [Codes, 1930, § 5845; 1942, § 8876; Laws, 1926, ch. 307; Laws, 1977, ch. 306]

§ 73-21-65. [Codes, Hemingway's 1917, § 6360; 1930, § 5847; 1942, § 8877; Laws, 1916, ch. 114]

§ 73-21-67. [Laws, 1973, ch. 381, § 6]

Editor's Note — Former § 73-21-1 required that persons must obtain a license in order to practice pharmacy. Similar provisions may be found in § 73-21-83.

Former § 73-21-3 defined the term "registered pharmacist" and provided for license renewal fees. Similar provisions may be found in §§ 73-21-73 and 73-21-91.

Former § 73-21-5 provided for assistant pharmacists. For a section dealing with the abolition of assistant pharmacists, see § 73-21-95.

Former § 73-21-7 provided for licenses to practice pharmacy for graduates of the University of Mississippi. Similar provisions may be found in § 73-21-89.

Former § 73-21-9 provided for the state board of pharmacy. Similar provisions may be found in § 73-21-75.

Former § 73-21-11 provided for the removal of members of the board by the governor. Similar provisions may be found in § 73-21-75.

Former § 73-21-13 listed the powers and duties of the state board of pharmacy. Similar provisions may be found in § 73-21-81.

Former § 73-21-15 dealt with the duties of the secretary of the state board of pharmacy.

Former § 73-21-17 provided for compensation of board members and the secretary and executive officer. Similar provisions may be found in §§ 73-21-77 and 73-21-79.

Former § 73-21-19 provided for appointees to the board taking an oath.

Former § 73-21-21 provided for the purchase of supplies.

Former § 73-21-23 provided for applications and examinations for licenses to practice pharmacy. Similar provisions may be found in § 73-21-85.

Former § 73-21-25 provided for the examination of applicants for licenses to practice pharmacy. Similar provisions may be found in § 73-21-93.

Former § 73-21-27 provided for licenses by reciprocity. Similar provisions may be found in § 73-21-87.

Former § 73-21-29 provided for a fee to take the examination. Similar provisions may be found in § 73-21-85.

Former § 73-21-31 provided for a temporary license to practice pharmacy.

Former § 73-21-33 provided that licenses were to be filed with the circuit court clerk and recorded.

Former § 73-21-35 provided that if a licensee changes his or her county of residence he or she must file the license with the circuit court clerk in the new county of residence.

Former § 73-21-37 provided for the issuance of a new license of the original was lost or destroyed.

Former § 73-21-39 provided for the grounds and procedures to revoke a pharmacist's license. Similar provisions may be found in § 73-21-97.

Former § 73-21-41 provided for a permit to operate a drugstore, for the qualifications and operational procedures, and for penalties. Similar provisions may be found in § 73-21-105.

Former § 73-21-43 prohibited the sale of certain drugs in vending machines and listed certain exceptions.

Former § 73-21-45 provided that World War I veterans could continue practicing pharmacy under the provisions of former statutes.

Former § 73-21-47 provided that a license to practice pharmacy was to be displayed.

Former § 73-21-49 provided that failure to display a license to practice pharmacy would be prima facie evidence that the person is not a registered pharmacist.

Former § 73-21-51 provided for use of a certified copy of a license in the event that a license to practice pharmacy was lost.

Former § 73-21-53 listed procedures to follow in the event that a licensee changed position or employment.

Former § 73-21-55 provided for the consequences of falsely displaying a license to practice pharmacy.

Former § 73-21-57 provided for penalties for practicing pharmacy without a license. Similar provisions may be found in § 73-21-103.

Former § 73-21-59 provided that a proprietor of a pharmacy was not to employ an unlicensed pharmacist.

Former § 73-21-61 provided for the revocation of a license for the unlawful sale of certain drugs. Similar provisions may be found in § 73-21-97.

Former § 73-21-63 defined the term "recognized college."

Former § 73-21-65 pertained to the sale of patent medicines. Similar provisions may be found in § 73-21-123.

Former § 73-21-67 provided for the deposit and payment in the state treasury of funds received by the state board of pharmacy. Similar provisions may be found in § 73-21-113.

MISSISSIPPI PHARMACY PRACTICE ACT

SEC.

73-21-69. Repeal of Sections 73-21-71 through 73-21-129.
73-21-71. Short title [Repealed effective July 1, 2020].
73-21-73. Definitions [Repealed effective July 1, 2020].
73-21-75. State Board of Pharmacy; number, qualifications, appointment and terms of members; appointments made from names submitted by pharmacist association; filling of vacancies; removal of members [Repealed July 1, 2020].
73-21-77. Organization of board; oath; meetings; compensation and expenses of members [Repealed effective July 1, 2020].
73-21-79. Executive director; additional employees; legal counsel [Repealed effective July 1, 2020].
73-21-81. General powers and duties of board; enforcement of chapter; rules and regulations [Repealed effective July 1, 2020].
73-21-83. Board to regulate practice of pharmacy; licensing of pharmacists; fees; persons holding license on July 1, 1991 [Repealed effective July 1, 2020].
73-21-85. Requirements for pharmacist's license by examination or score transfer; licensing of foreign pharmacy graduates; criminal background checks [Repealed effective July 1, 2020].
73-21-87. Requirements for pharmacist's license by reciprocity or license transfer [Repealed effective July 1, 2020].
73-21-89. Requirements for pharmacist's license for graduates of University of Mississippi School of Pharmacy; termination of provisions [Repealed effective July 1, 2020].
73-21-91. Renewal of licenses; reinstatement upon failure to renew [Repealed effective July 1, 2020].
73-21-93. Examination; frequency and location; scope; facilities [Repealed effective July 1, 2020].
73-21-95. Abolition of assistant pharmacist's license; issuance of pharmacists' licenses to persons holding such licenses [Repealed effective July 1, 2020].
73-21-97. Denial of renewal, suspension, revocation or restrictions on licenses, registrations or permits; grounds; warning or reprimand [Repealed effective July 1, 2020; paragraph (1)(o) repealed effective July 1, 2020].
73-21-99. Hearings on violations; notice; procedure [Repealed effective July 1, 2020].
73-21-101. Appeal from adverse action on a license, registration or permit; scope of review [Repealed effective July 1, 2020].
73-21-103. Penalties for violations; requirement of rehabilitation or additional education; reinstatement of licenses or permits; enforcement proceedings [Repealed effective July 1, 2020].
73-21-105. Registration of businesses where prescription drugs or devices are dispensed, sold, repackaged, manufactured, etc.; registration of reverse distributors; establishment of criteria; procedures and fees; applications; standards for operation; reports of changes of circumstances; penalties for violations; exemption of physicians, dentists, etc., from chapter [Repealed effective July 1, 2020].

73-21-106. Registration requirement for nonresident pharmacies that ship, mail, or deliver drugs into state [Repealed effective July 1, 2020].
73-21-107. Inspection of permittee's facility and records; scope [Repealed effective July 1, 2020].
73-21-108. Permit requirements for persons providing home medical equipment [Repealed effective July 1, 2020].
73-21-109. Unlawful use of certain business names [Repealed effective July 1, 2020].
73-21-111. Personnel regulations; registration of pharmacy technicians; annual registration fee; criminal background checks [Repealed effective July 1, 2020].
73-21-113. Payment and deposit into state treasury of funds received by state board of pharmacy; expenditure [Repealed effective July 1, 2020].
73-21-115. Prescription forms; execution; dispensing options; one-time emergency dispensing authority [Repealed effective July 1, 2020].
73-21-117. Substitution of generic equivalent drug [Repealed effective July 1, 2020].
73-21-119. Labeling of drug products sold at retail [Repealed effective July 1, 2020].
73-21-121. Immunity from civil or criminal liability of dispensing pharmacists and prescribers; immunity from civil liability of persons providing information to board or pharmacist organization; disclosure of information in records of board or pharmacist organization [Repealed effective July 1, 2020].
73-21-123. Sales of certain drugs not regulated [Repealed effective July 1, 2020].
73-21-125. Community pharmacies and pharmacists and volunteers working therein immune from civil liability for actions arising out of provision of charitable or gratuitous pharmaceutical products [Repealed effective July 1, 2020].
73-21-126. Rules and regulations for issuance and renewal of licenses and permits for in and out of state wholesale distributors, chain pharmacy warehouses and re-packagers [Repealed effective July 1, 2020].
73-21-127. Board of Pharmacy to develop and implement computerized program to track certain prescriptions; report of suspected abuse and misuse of controlled substances; access to collected data; confidentiality; penalties for knowingly failing to submit or submitting incorrect dispensing information [Repealed effective July 1, 2020].
73-21-129. Certain drug manufacturers required to make provision for return of outdated drugs from pharmacies; investigation and discipline of noncompliant manufacturers; exemption; definitions [Repealed effective July 1, 2020].

§ 73-21-69. Repeal of Sections 73-21-71 through 73-21-129.

Sections 73-21-71 through 73-21-129, which create the State Board of Pharmacy and prescribe its duties and powers, shall stand repealed on July 1, 2020.

SOURCES: Laws, 1979, ch. 301, § 37; Laws, 1979, ch. 357, § 17; Laws, 1983, ch. 414, § 28; Laws, 1991, ch. 527, § 28; Laws, 1993, ch. 416, § 1; Laws, 1998, ch. 511, § 1; Laws, 2002, ch. 501, § 1; Laws, 2006, ch. 533, § 1; Laws, 2011, ch. 546, § 1; Laws, 2016, ch. 448, § 1, eff from and after July 1, 2016.

Editor's Note — Laws of 1979, ch. 301, § 55, provides as follows:

"SECTION 55. The codifier of this act is hereby authorized and directed to codify Sections 16 through 54 of this act with the enabling legislation of the governmental units which are affected by said sections."

Amendment Notes — The 2016 amendment substituted "73-21-129" for "73-21-123" and extended the date of the repealer for Sections 73-21-71 through 73-21-129 by substituting "July 1, 2020" for "July 1, 2016."

Cross References — Mississippi Agency Review Law, see § 5-9-13.

§ 73-21-71. Short title [Repealed effective July 1, 2020].

This chapter shall be known as the "Mississippi Pharmacy Practice Act."

SOURCES: Laws, 1983, ch. 414, § 1; reenacted without change, Laws, 1991, ch. 527, § 1; reenacted without change, Laws, 1993, ch. 416, § 2; reenacted without change, Laws, 1998, ch. 511, § 2; reenacted without change, Laws, 2002, ch. 501, § 2; reenacted without change, Laws, 2006, ch. 533, § 2; reenacted without change, Laws, 2011, ch. 546, § 2; reenacted without change, Laws, 2016, ch. 448, § 2, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Authority for pharmacists to fill prescriptions of dentists, see § 73-9-53.

Authority for pharmacists to dispense diagnostic pharmaceutical agents specified in § 73-19-103 to optometrist certified to use pharmaceutical agents in the practice of optometry, see § 73-19-109.

RESEARCH REFERENCES

ALR. Criminal responsibility of druggist for death or injury in consequence of mistake. 55 A.L.R.2d 714.

Liability of manufacturer or seller for injury by drug or medicine sold. 79 A.L.R.2d 301.

Applicability of statutes prohibiting sales of medicines or drugs other than by pharmacies or pharmacists, to sales of "brand name" or original-package nonprescription remedies. 98 A.L.R.2d 1063.

Validity of statute or ordinance forbidding pharmacist to advertise prices of drugs or medicines. 44 A.L.R.3d 1301.

Civil liability of pharmacist or druggists for failure to warn of potential drug interactions in use of prescription drug. 79 A.L.R.5th 409.

Practice References. Woodside, Drug Product Liability (Matthew Bender).

§ 73-21-73. Definitions [Repealed effective July 1, 2020].

As used in this chapter, unless the context requires otherwise:

(a) "Administer" means the direct application of a prescription drug pursuant to a lawful order of a practitioner to the body of a patient by injection, inhalation, ingestion or any other means.

(b) "Board of Pharmacy," "Pharmacy Board," "MSBP" or "board" means the State Board of Pharmacy.

(c) "Compounding" means (i) the production, preparation, propagation, conversion or processing of a sterile or nonsterile drug or device either directly or indirectly by extraction from substances of natural origin or independently by means of chemical or biological synthesis or from bulk chemicals or the preparation, mixing, measuring, assembling, packaging or labeling of a drug or device as a result of a practitioner's prescription drug order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice, or (ii) for the purpose of, as an incident to, research, teaching or chemical analysis and not for sale or dispensing. Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine regularly observed prescribing patterns.

(d) "Continuing education unit" means ten (10) clock hours of study or other such activity as may be approved by the board, including, but not limited to, all programs which have been approved by the American Council on Pharmaceutical Education.

(e) "Deliver" or "delivery" means the actual, constructive or attempted transfer in any manner of a drug or device from one person to another, whether or not for a consideration, including, but not limited to, delivery by mailing or shipping.

(f) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory which is required under federal or state law to be prescribed by a practitioner and dispensed by a pharmacist.

(g) "Dispense" or "dispensing" means the interpretation of a valid prescription of a practitioner by a pharmacist and the subsequent preparation of the drug or device for administration to or use by a patient or other individual entitled to receive the drug.

(h) "Distribute" means the delivery of a drug or device other than by administering or dispensing to persons other than the ultimate consumer.

(i) "Drug" means:

(i) Articles recognized as drugs in the official United States Pharmacopeia, official National Formulary, official Homeopathic Pharmacopeia, other drug compendium or any supplement to any of them;

(ii) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

(iii) Articles other than food intended to affect the structure or any function of the body of man or other animals; and

(iv) Articles intended for use as a component of any articles specified in subparagraph (i), (ii) or (iii) of this paragraph.

(j) "Drugroom" means a business, which does not require the services of a pharmacist, where prescription drugs or prescription devices are bought, sold, maintained or provided to consumers.

(k) "Extern" means a student in the professional program of a school of pharmacy accredited by the American Council on Pharmaceutical Education who is making normal progress toward completion of a professional degree in pharmacy.

(*l*) "Foreign pharmacy graduate" means a person whose undergraduate pharmacy degree was conferred by a recognized school of pharmacy outside of the United States, the District of Columbia and Puerto Rico. Recognized schools of pharmacy are those colleges and universities listed in the World Health Organization's World Directory of Schools of Pharmacy, or otherwise approved by the Foreign Pharmacy Graduate Examination Committee (FPGEC) certification program as established by the National Association of Boards of Pharmacy.

(m) "Generic equivalent drug product" means a drug product which (i) contains the identical active chemical ingredient of the same strength, quantity and dosage form; (ii) is of the same generic drug name as determined by the United States Adoptive Names and accepted by the United States Food and Drug Administration; and (iii) conforms to such rules and regulations as may be adopted by the board for the protection of the public to assure that such drug product is therapeutically equivalent.

(n) "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocol to such protocol, to communicate information of all kinds by wire or radio.

(o) "Interested directly" means being employed by, having full or partial ownership of, or control of, any facility permitted or licensed by the Mississippi State Board of Pharmacy.

(p) "Interested indirectly" means having a spouse who is employed by any facility permitted or licensed by the Mississippi State Board of Pharmacy.

(q) "Intern" means a person who has graduated from a school of pharmacy but has not yet become licensed as a pharmacist.

(r) "Manufacturer" means a person, business or other entity engaged in the production, preparation, propagation, conversion or processing of a prescription drug or device, if such actions are associated with promotion and marketing of such drugs or devices.

(s) "Manufacturer's distributor" means any person or business who is not an employee of a manufacturer, but who distributes sample drugs or devices, as defined under subsection (i) of this section, under contract or business arrangement for a manufacturer to practitioners.

(t) "Manufacturing" of prescription products means the production, preparation, propagation, conversion or processing of a drug or device, either directly or indirectly, by extraction from substances from natural origin or independently by means of chemical or biological synthesis, or from bulk chemicals and includes any packaging or repackaging of the substance(s) or labeling or relabeling of its container, if such actions are associated with promotion and marketing of such drug or devices.

(u) "Misappropriation of a prescription drug" means to illegally or unlawfully convert a drug, as defined in subsection (i) of this section, to one's own use or to the use of another.

(v) "Nonprescription drugs" means nonnarcotic medicines or drugs that may be sold without a prescription and are prepackaged and labeled for use by the consumer in accordance with the requirements of the statutes and regulations of this state and the federal government.

(w) "Person" means an individual, corporation, partnership, association or any other legal entity.

(x) "Pharmacist" means an individual health care provider licensed by this state to engage in the practice of pharmacy. This recognizes a pharmacist as a learned professional who is authorized to provide patient services.

(y) "Pharmacy" means any location for which a pharmacy permit is required and in which prescription drugs are maintained, compounded and dispensed for patients by a pharmacist. This definition includes any location where pharmacy-related services are provided by a pharmacist.

(z) "Prepackaging" means the act of placing small precounted quantities of drug products in containers suitable for dispensing or administering in anticipation of prescriptions or orders.

(aa) "Unlawful or unauthorized possession" means physical holding or control by a pharmacist of a controlled substance outside the usual and lawful course of employment.

(bb) "Practice of pharmacy" means a health care service that includes, but is not limited to, the compounding, dispensing, and labeling of drugs or devices; interpreting and evaluating prescriptions; administering and distributing drugs and devices; the compounding, dispensing and labeling of drugs and devices; maintaining prescription drug records; advising and consulting concerning therapeutic values, content, hazards and uses of drugs and devices; initiating or modifying of drug therapy in accordance with written guidelines or protocols previously established and approved by the board; selecting drugs; participating in drug utilization reviews; storing prescription drugs and devices; ordering lab work in accordance with written guidelines or protocols as defined by paragraph (ll) of this section; providing pharmacotherapeutic consultations; supervising supportive personnel and such other acts, services, operations or transactions necessary or incidental to the conduct of the foregoing.

(cc) "Practitioner" means a physician, dentist, veterinarian, or other health care provider authorized by law to diagnose and prescribe drugs.

(dd) "Prescription" means a written, verbal or electronically transmitted order issued by a practitioner for a drug or device to be dispensed for a patient by a pharmacist. "Prescription" includes a standing order issued by a practitioner to an individual pharmacy that authorizes the pharmacy to dispense an opioid antagonist to certain persons without the person to whom the opioid antagonist is dispensed needing to have an individual prescription, as authorized by Section 41-29-319(3).

(ee) "Prescription drug" or "legend drug" means a drug which is required under federal law to be labeled with either of the following statements prior to being dispensed or delivered:

(i) "Caution: Federal law prohibits dispensing without prescription," or

(ii) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only.

(ff) "Product selection" means the dispensing of a generic equivalent drug product in lieu of the drug product ordered by the prescriber.

(gg) "Provider" or "primary health care provider" includes a pharmacist who provides health care services within his or her scope of practice pursuant to state law and regulation.

(hh) "Registrant" means a pharmacy or other entity which is registered with the Mississippi State Board of Pharmacy to buy, sell or maintain controlled substances.

(ii) "Repackager" means a person registered by the Federal Food and Drug Administration as a repackager who removes a prescription drug product from its marketed container and places it into another, usually of smaller size, to be distributed to persons other than the consumer.

(jj) "Reverse distributor" means a business operator that is responsible for the receipt and appropriate return or disposal of unwanted, unneeded or outdated stocks of controlled or uncontrolled drugs from a pharmacy.

(kk) "Supportive personnel" or "pharmacist technician" means those individuals utilized in pharmacies whose responsibilities are to provide nonjudgmental technical services concerned with the preparation and distribution of drugs under the direct supervision and responsibility of a pharmacist.

(*ll*) "Written guideline or protocol" means an agreement in which any practitioner authorized to prescribe drugs delegates to a pharmacist authority to conduct specific prescribing functions in an institutional setting, or with individual patients, provided that a specific protocol agreement is signed on each patient and is filed as required by law or by rule or regulation of the board.

(mm) "Wholesaler" means a person who buys or otherwise acquires prescription drugs or prescription devices for resale or distribution, or for repackaging for resale or distribution, to persons other than consumers.

(nn) "Pharmacy benefit manager" has the same meaning as defined in Section 73-21-153.

SOURCES: Laws, 1983, ch. 414, § 2; Laws, 1984, ch. 354, § 1; Laws, 1991, ch. 527, § 2; Laws, 1993, ch. 416, § 3; Laws, 1994, ch. 513, § 1; Laws, 1995, ch. 513, § 1; reenacted without change, Laws, 1998, ch. 511, § 3; reenacted without change, Laws, 2002, ch. 501, § 3; reenacted without change, Laws, 2006, ch. 533, § 3; Laws, 2008, ch. 512, § 2; Laws, 2009, ch. 469, § 1; reenacted and amended, Laws, 2011, ch. 546, § 3; reenacted and amended, Laws, 2016, ch. 448, § 3; Laws, 2017, ch. 346, § 3, eff from and after July 1, 2017.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted and amended the section by inserting open quotation marks preceding "Unlawful" and deleting them preceding "possession" in (aa).

The 2017 amendment added the second sentence of (dd).

Cross References — Definition of "valid prescription," as it pertains to prescriptions for controlled substances, for the purposes of this chapter, see § 41-29-137.

Board to regulate wholesaler distribution of drugs and devices and distribution of sample drugs or devices as defined in this section, see § 73-21-83.

JUDICIAL DECISIONS

1.-4. [Reserved for future use.]
5. Under former § 73-21-1.

1.-4. [Reserved for future use.]

5. Under former § 73-21-1.

Person preparing medicine from herbs under directions contained on packages is not engaged in practice of pharmacy. Redmond v. State ex rel. Att'y Gen., 152 Miss. 54, 118 So. 360 (1928).

Practice of pharmacy is preparing medicine, filling prescriptions, and compounding drugs and does not extend to preparation of teas from herbs or roots. Redmond v. State ex rel. Att'y Gen., 152 Miss. 54, 118 So. 360 (1928).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs §§ 1, 2, 4, 6, and 18.

Practice References. Woodside, Drug Product Liability (Matthew Bender).

§ 73-21-75. State Board of Pharmacy; number, qualifications, appointment and terms of members; appointments made from names submitted by pharmacist association; filling of vacancies; removal of members [Repealed July 1, 2020].

(1) The State Board of Pharmacy created by former Section 73-21-9 is continued and reconstituted as follows: The board shall consist of seven (7) appointed members. At least one (1) appointment shall be made from each congressional district. Each appointed member of the board shall be appointed by the Governor, with the advice and consent of the Senate, from a list of five (5) names submitted by the Mississippi Pharmacists Association, with input from the Magnolia Pharmaceutical Society, the Mississippi Independent Pharmacies Association (MIPA), Mississippi Society of Health-System Pharmacists (MSHP) and Mississippi College of Clinical Pharmacy (MCCP) and other pharmacist associations or societies. Of the members appointed, one (1) shall, at the time of appointment, have had five (5) years' experience as a pharmacist at a facility holding an institutional permit, and one (1) shall, at the time of appointment, have had five (5) years' experience as a pharmacist at a facility holding a retail permit. Any person appointed to the board shall be limited to two (2) full terms of office during any fifteen-year period, including any member serving on May 14, 1992.

(2) The members of the board appointed and serving prior to July 1, 1983, whose terms have not expired by July 1, 1983, shall serve the balance of their terms as members of the reconstituted board, and they shall be considered to be from the same congressional districts from which they were originally appointed if they still reside therein, even if the district boundaries have changed subsequent to their original appointments. The Governor shall appoint the remaining members of the reconstituted board in the manner prescribed in subsection (1) of this section on July 1, 1983. The initial members of the reconstituted board shall serve terms of office as follows:

(a) The term of the member from the First Congressional District shall expire on July 1, 1984; and from and after July 1, 1996, this appointment shall be designated as Post 1.

(b) The term of the member from the Second Congressional District shall expire on July 1, 1988; and from and after July 1, 1996, this appointment shall be designated as Post 2.

(c) The term of the member from the Third Congressional District shall expire on July 1, 1986; and from and after July 1, 1996, this appointment shall be designated as Post 3.

(d) The term of the member from the Fourth Congressional District shall expire on July 1, 1985; and from and after July 1, 1996, this appointment shall be designated as Post 4.

(e) The term of the member from the Fifth Congressional District shall expire on July 1, 1987; and from and after July 1, 1996, this appointment shall be designated as Post 5.

(f) The term of one (1) of the members from the state at large shall expire on July 1, 1985; and from and after July 1, 1996, this appointment shall be designated as Post 6.

(g) The term of the other member from the state at large shall expire on July 1, 1988; and from and after July 1, 1996, this appointment shall be designated as Post 7.

The appointments of members from congressional districts as provided under this section shall be made from the congressional districts as they existed on July 1, 2001.

(3) At the expiration of a term, members of the board shall be appointed in the manner prescribed in subsection (1) of this section for terms of five (5) years from the expiration date of the previous terms. Any vacancy on the board prior to the expiration of a term for any reason, including resignation, removal, disqualification, death or disability, shall be filled by appointment of the Governor in the manner prescribed in subsection (1) of this section for the balance of the unexpired term. The Mississippi Pharmacists Association, with input from the Magnolia Pharmaceutical Society, the Mississippi Independent Pharmacies Association (MIPA), Mississippi Society of Health-System Pharmacists (MSHP) and Mississippi College of Clinical Pharmacy (MCCP) and other pharmacist associations or societies, shall submit a list of nominees no more than thirty (30) days after a vacancy occurs, and the Governor shall fill such vacancies within ninety (90) days after each such vacancy occurs. If an election is required to narrow the number of potential candidates for nominations to the board, the Mississippi Pharmacists Association shall provide a ballot to each pharmacist holding a valid Mississippi license.

(4) To be qualified to be a member of the board, a person shall:

(a) Be an adult citizen of Mississippi for a period of at least five (5) years preceding his appointment to the board;

(b) Be a pharmacist licensed and in good standing to practice pharmacy in the State of Mississippi; and

(c) Have actively engaged in the practice of pharmacy in Mississippi for a period of at least five (5) years.

(5) The Governor may remove any or all members of the board on proof of unprofessional conduct, continued absence from the state, or for failure to perform the duties of his office. Any member who shall not attend two (2) consecutive meetings of the board for any reason other than illness of such member shall be subject to removal by the Governor. The president of the board shall notify the Governor in writing when any such member has failed to attend two (2) consecutive regular meetings. No removal shall be made without first giving the accused an opportunity to be heard in refutation of the charges made against him, and he shall be entitled to receive a copy of the charges at the time of filing.

SOURCES: Laws, 1983, ch. 414, § 3; Laws, 1991, ch. 527, § 3; Laws, 1992, ch. 531 § 1; reenacted, Laws, 1993, ch. 416, § 4; Laws, 1995, ch. 513, § 2; reenacted and amended, Laws, 1998, ch. 511, § 4; reenacted and amended, Laws, 2002, ch. 501, § 4; reenacted without change, Laws, 2006, ch. 533, § 4; reenacted and amended, Laws, 2011, ch. 546, § 4; reenacted and amended, Laws, 2016, ch. 448, § 4, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Laws of 2014, ch. 365, § 1, provides:

"SECTION 1. The Department of Finance and Administration, acting on behalf of the Mississippi Board of Pharmacy, may sell and convey certain state-owned real property under possession of the Mississippi Board of Pharmacy located on Key Drive in Madison County, Mississippi, provided that the sale and conveyance is subject to the requirements of Section 29-1-1 and such other conditions authorized in this section. The property being more particularly described as follows:

"Being a part of Lot 2, Key Office Park, Madison, Mississippi, as recorded in Plat Cabinet C on Slide 136, of the Chancery records of Madison County, Mississippi, and being more particularly described as follows: Begin at a ⅝′′ iron bar marking the Northeast corner of aforesaid Lot 2 and run thence S 11 degrees 40 minutes 33 seconds W, along the Eastern boundary of said Lot 2, 161.68 feet to the Southeast corner thereof: run thence N 83 degrees 10 minutes 11 seconds W, along the Southern boundary of said Lot 2, 77.75 feet to an iron bar; run thence N 7 degrees 20 minutes 52 seconds E, 35.76 feet to a point on the South face of a brick office building; continue thence N 7 degrees 20 minutes 52 seconds E, along the centerline of a 10 feet wide wall, and the Northerly projections thereof, 46.20 feet; run thence North 7 degrees 37 minutes 08 seconds E, 80.67 feet to the North boundary of aforesaid Lot 2, run thence S 82 degrees 12 minutes 11 seconds E, along the North boundary of said Lot and the South right-of-way line of Key Drive, 89.57 feet to the POINT OF BEGINNING.

"(2) The real property and the improvements thereon, described in subsection (1) of this section shall be sold for not less than the current fair market value as determined by the average of at least two (2) appraisals by qualified appraisers, one (1) of which shall be selected by the Department of Finance and Administration, and both of whom shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board.

"(3) All monies derived from the sale of the property described in subsection (1) of this section shall be deposited into a special fund, designated as the 'Mississippi Board of Pharmacy Property Fund,' which is created in the State Treasury for the use and benefit of the Mississippi Board of Pharmacy in support of the Prescription Monitoring Program. Unexpended amounts remaining in the special fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned on the amounts in the special fund shall be deposited to the credit of the special fund.

"(4) The Department of Finance and Administration may correct any discrepancies in the legal description provided in this section.

"(5) The State of Mississippi shall retain all mineral rights to the property sold under this section."

Amendment Notes — The 2016 amendment reenacted and amended the section by deleting "hereby" preceding "continued" in the first sentence of (1), and adding the last sentence of (3).

Cross References — General powers and duties of governor, see § 7-1-5.

ATTORNEY GENERAL OPINIONS

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs §§ 81, 82 et seq.

CJS. 28 C.J.S., Drugs and Narcotics, §§ 65-68, 69, 70.

§ 73-21-77. Organization of board; oath; meetings; compensation and expenses of members [Repealed effective July 1, 2020].

(1) Each person appointed as a member of the board shall qualify by taking the oath prescribed by the Constitution for the state officers, and shall file certificate thereof in the Office of the Secretary of State within fifteen (15) days after his appointment.

(2) There shall be a president of the board and such other officers as deemed necessary by the board elected by and from its membership.

(3) The board shall meet at least once each quarter to transact business, and may meet at such additional times as it may deem necessary. Such additional meetings may be called by the president of the board or a majority of the members of the board.

(4) The place for each meeting shall be determined prior to giving notice of such meeting and shall not be changed after such notice is given without adequate subsequent notice.

(5) A majority of the members of the board shall constitute a quorum for the conduct of the meeting and all actions of the board shall be by a majority.

(6) Each member of the board shall receive a per diem as provided in Section 25-3-69, not to exceed thirty (30) days in any one (1) period of twelve (12) months, for each day actually engaged in meetings of the board, together with necessary traveling and other expenses as provided in Section 25-3-41.

SOURCES: Laws, 1983, ch. 414, § 4; reenacted without change, Laws, 1991, ch. 527, § 4; Laws, 1992, ch. 531 § 2; reenacted, Laws, 1993, ch. 416, § 5; reenacted without change, Laws, 1998, ch. 511, § 5; reenacted without change, Laws, 2002, ch. 501, § 5; reenacted without change, Laws, 2006, ch. 533, § 5; reenacted without change, Laws, 2011, ch. 546, § 5; reenacted without change, Laws, 2016, ch. 448, § 5, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted the section without change.

§ 73-21-79. Executive director; additional employees; legal counsel [Repealed effective July 1, 2020].

(1) The board shall employ an executive director of the board. The executive director shall be a citizen of Mississippi and a pharmacist licensed and in good standing to practice pharmacy in the State of Mississippi, who has had five (5) years' experience as a pharmacist.

(2) The executive director shall receive a salary to be set by the board, subject to the approval of the State Personnel Board, and shall be entitled to necessary expenses incurred in the performance of his official duties. He shall devote full time to the duties of his office and shall not be engaged in any other business that will interfere with the duties of his office.

(3) The duties and responsibilities of the executive director shall be defined by rules and regulations prescribed by the board.

(4) The board may, in its discretion, employ persons in addition to the executive director in such other positions or capacities as it deems necessary to the proper conduct of board business. Any pharmacist-investigator employed by the board may have other part-time employment, provided that he shall not accept any employment that would cause a conflict of interest in his pharmacist-investigator duties. The board may employ legal counsel to assist in the conduct of its business.

SOURCES: Laws, 1983, ch. 414, § 5; reenacted without change, Laws, 1991, ch. 527, § 5; Laws, 1992, ch. 531 § 3; Laws, 1993, ch. 416, § 6; reenacted without change, Laws, 1998, ch. 511, § 6; reenacted without change, Laws, 2002, ch. 501, § 6; reenacted and amended, Laws, 2006, ch. 533, § 6; reenacted without change, Laws, 2011, ch. 546, § 6; reenacted without change, Laws, 2016, ch. 448, § 6, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Promulgation of regulations for governance of supportive personnel, see § 73-21-111.

§ 73-21-81. General powers and duties of board; enforcement of chapter; rules and regulations [Repealed effective July 1, 2020].

The responsibility for the enforcement of the provisions of this chapter shall be vested in the board. The board shall have all of the duties, powers and authority specifically granted by and necessary to the enforcement of this chapter. The board may make, adopt, amend and repeal such rules and regulations as may be deemed necessary by the board from time to time for the proper administration and enforcement of this chapter, in accordance with the provisions of the Mississippi Administrative Procedures Law (Section 25-43-1 et seq.).

SOURCES: Laws, 1983, ch. 414, § 6; reenacted without change, Laws, 1991, ch. 527, § 6; reenacted without change, Laws, 1993, ch. 416, § 7, (approved

March 18, 1993); reenacted without change, Laws, 1998, ch. 511, § 7; reenacted without change, Laws, 2002, ch. 501, § 7; reenacted without change, Laws, 2006, ch. 533, § 7; reenacted without change, Laws, 2011, ch. 546, § 7; reenacted without change, Laws, 2016, ch. 448, § 7, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Pursuant to § 25-43-1.101(3), any reference in this section to § 25-43-1 et seq. shall be deemed to mean and refer to § 25-43-1.101 et seq.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Duties of state board of pharmacy under Uniform Controlled Substances Law, see §§ 41-29-125, 41-29-127, 41-29-129.

Powers and duties of state board of pharmacy with respect to regulating use of diagnostic pharmaceutical agents by optometrists, see §§ 73-19-101 et seq.

Authority of board to deny license or permit renewal or to suspend, revoke or restrict license or permit of person in violation of orders or rules and regulations of board, see § 73-21-97.

Regulations governing supportive personnel of board, see § 73-21-111.

Exemption of certain drugs from regulation, see § 73-21-123.

JUDICIAL DECISIONS

1. Medical malpractice.
2.-4. [Reserved for future use.]
5. Under former § 73-21-13.

1. Medical malpractice.

Trial court erred by granting a residential drug and alcohol treatment facility summary judgment based on the wrongful conduct rule in a medical malpractice action, even though the deceased patient violated the law by possessing a controlled substance without a prescription, where the facility had a duty to safeguard him from controlled substances, the facility had a duty to use reasonable care to assess, monitor, and treat the patient after his first urine sample indicated the presence of the controlled substance, and the facility's owner kept the controlled substance in his unlocked desk drawer for several years and kept no inventories or records of dispensing the controlled substance in violation of state and federal laws, and it was foreseeable that the patient, who had sought treatment for abusing prescription drugs, would attempt to secure prescription drugs. Cahn v. COPAC, Inc., 198 So. 3d 347 (Miss. Ct. App. 2015), writ of certiorari denied by 202 So. 3d 613, 2016 Miss. LEXIS 361 (Miss. Aug. 25, 2016), writ of certiorari denied by 2016 Miss. LEXIS 365 (Miss. Aug. 25, 2016).

2.-4. [Reserved for future use.]

5. Under former § 73-21-13.

Subdivisions (a), (b), and (f) of former § 73-21-13 and Code 1972 § 73-21-39(1) do not expressly grant to the State Board of Pharmacy the power to enact a rule prohibiting the advertising of discount prices on prescription drugs, nor could such power be implied from the statutory language. Mississippi State Bd. of Pharmacy v. Steele, 317 So. 2d 33 (Miss. 1975).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs §§ 81, 82 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Forms 1 et seq. (licensing and regulation; pharmacists and pharmacies).

9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Forms 2, 6, 8.

CJS. 28 C.J.S., Drugs and Narcotics §§ 14-18, 65-68 et seq.

§ 73-21-83. Board to regulate practice of pharmacy; licensing of pharmacists; fees; persons holding license on July 1, 1991 [Repealed effective July 1, 2020].

(1) The board shall be responsible for the control and regulation of the practice of pharmacy, to include the regulation of pharmacy externs or interns and pharmacist technicians, in this state, the regulation of the wholesaler distribution of drugs and devices as defined in Section 73-21-73, the distribution of sample drugs or devices by manufacturer's distributors as defined in Section 73-21-73 by persons other than the original manufacturer or distributor in this state and the regulation of pharmacy benefit managers as defined in Section 73-21-153.

(2) A license for the practice of pharmacy shall be obtained by all persons prior to their engaging in the practice of pharmacy. However, the provisions of this chapter shall not apply to physicians, dentists, veterinarians, osteopaths or other practitioners of the healing arts who are licensed under the laws of the State of Mississippi and are authorized to dispense and administer prescription drugs in the course of their professional practice.

(3) The initial licensure fee shall be set by the board but shall not exceed Two Hundred Dollars ($200.00), except the initial licensure fee for pharmacy benefit managers shall be set by the board but shall not exceed Five Hundred Dollars ($500.00).

(4) All students actively enrolled in a professional school of pharmacy accredited by the American Council on Pharmaceutical Education who are making satisfactory progress toward graduation and who act as an extern or intern under the direct supervision of a pharmacist in a location permitted by the Board of Pharmacy must obtain a pharmacy student registration prior to engaging in such activity. The student registration fee shall be set by the board but shall not exceed One Hundred Dollars ($100.00).

(5) All persons licensed to practice pharmacy prior to July 1, 1991, by the State Board of Pharmacy under Section 73-21-89 shall continue to be licensed under the provisions of Section 73-21-91.

SOURCES: Laws, 1983, ch. 414, § 7; Laws, 1991, ch. 527, § 7; Laws, 1993, ch. 416, § 8; Laws, 1994, ch. 513, § 2; Laws, 1997, ch. 441, § 1; reenacted without change, Laws, 1998, ch. 511, § 8; reenacted without change, Laws, 2002, ch. 501, § 8; reenacted without change, Laws, 2006, ch. 533, § 8; reenacted and amended, Laws, 2011, ch. 546, § 29; Laws, 2013, ch. 541, § 1; reenacted and amended, Laws, 2016, ch. 448, § 8, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted and amended the section by deleting former (6), which read: "This section shall stand repealed on July 1, 2016."

Cross References — Definition of "pharmacist technician," see § 73-21-73(ii).

Requirement that licensure fees be paid as prerequisite to issuance of license by examination, see § 73-21-85.

Requirement that licensure fees be paid as prerequisite to issuance of license by reciprocity, see § 73-21-87.

Requirement that licensure fees be paid as prerequisite to issuance of license to graduate of University of Mississippi School of Pharmacy, see § 73-21-89.
Disposition of fees received by state board of pharmacy, see § 73-21-113.
Injunctions to restrain illegal practice of profession, see § 73-51-1.
Criminal offense of practicing as a pharmacist without having obtained license, see § 97-23-43.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs §§ 81, 82 et seq.

CJS. 28 C.J.S., Drugs and Narcotics §§ 14-18, 65-68 et seq.

§ 73-21-85. Requirements for pharmacist's license by examination or score transfer; licensing of foreign pharmacy graduates; criminal background checks [Repealed effective July 1, 2020].

(1) To obtain a license to engage in the practice of pharmacy by examination, or by score transfer, the applicant shall:

(a) Have submitted a written application on the form prescribed by the board;

(b) Be of good moral character;

(c) Have graduated from a school or college of pharmacy accredited by the American Council of Pharmaceutical Education and have been granted a pharmacy degree therefrom;

(d) Have successfully passed an examination approved by the board;

(e) Have paid all fees specified by the board for examination, not to exceed the cost to the board of administering the examination;

(f) Have paid all fees specified by the board for licensure; and

(g) Have submitted evidence of externship and/or internship as specified by the board.

(2) To obtain a license to engage in the practice of pharmacy, a foreign pharmacy graduate applicant shall obtain the National Association of Boards of Pharmacy's Foreign Pharmacy Graduate Examination Committee's certification, which shall include, but not be limited to, successfully passing the Foreign Pharmacy Graduate Equivalency Examination and attaining a total score of at least five hundred fifty (550) on the Test of English as a Foreign Language (TOEFL), and shall:

(a) Have submitted a written application on the form prescribed by the board;

(b) Be of good moral character;

(c) Have graduated and been granted a pharmacy degree from a college or school of pharmacy recognized and approved by the National Association of Boards of Pharmacy's Foreign Pharmacy Graduate Examination Committee;

(d) Have paid all fees specified by the board for examination, not to exceed the cost to the board of administering the examination;

(e) Have successfully passed an examination approved by the board;

(f) Have completed the number of internship hours as set forth by regulations of the board; and

(g) Have paid all fees specified by the board for licensure.

(3) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

(4) To insure that all applicants are of good moral character, the board shall conduct a criminal history records check on all applicants for a license. In order to determine the applicant's suitability for licensing, the applicant shall be fingerprinted. The board shall submit the fingerprints to the Department of Public Safety for a check of the state criminal records and forwarded to the Federal Bureau of Investigation for a check of the national criminal records. The Department of Public Safety shall disseminate the results of the state check and the national check to the board for a suitability determination. The board shall be authorized to collect from the applicant the amount of the fee that the Department of Public Safety charges the board for the fingerprinting, whether manual or electronic, and the state and national criminal history records checks.

(5) To insure that all applicants are of good moral character, the board, upon request of the Dean of the University of Mississippi School of Pharmacy, shall be authorized to conduct a criminal history records check on all applicants for enrollment into the School of Pharmacy. In order to determine the applicant's suitability for enrollment and licensing, the applicant shall be fingerprinted. The board shall submit the fingerprints to the Department of Public Safety for a check of the state criminal records and forwarded to the Federal Bureau of Investigation for a check of the national criminal records. The Department of Public Safety shall disseminate the results of the state check and the national check to the board for a suitability determination and the board shall forward the results to the Dean of the School of Pharmacy. The board shall be authorized to collect from the applicant the amount of the fee that the Department of Public Safety charges the board for the fingerprinting, whether manual or electronic, and the state and national criminal history records checks.

SOURCES: Laws, 1983, ch. 414, § 8; Laws, 1985, ch. 349; Laws, 1991, ch. 527, § 8; reenacted, Laws, 1993, ch. 416, § 9; Laws, 1994, ch. 513, § 3; Laws, 1995, ch. 513, § 3; Laws, 1997, ch. 588, § 46; reenacted without change, Laws, 1998, ch. 511, § 9; reenacted without change, Laws, 2002, ch. 501, § 9; Laws, 2005, ch. 514, § 1; reenacted and amended, Laws, 2006, ch. 533, § 9; reenacted without change, Laws, 2011, ch. 546, § 8; reenacted without change, Laws, 2016, ch. 448, § 9, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Establishment of licensure fees, see § 73-21-83.

Licensing of graduates of University of Mississippi School of Pharmacy, see § 73-21-89.

Pharmacist defaulting in license renewal for more than two years required to take examination pursuant to this section before being eligible for reinstatement as pharmacist, see § 73-21-91.

Frequency, location and scope of examination for pharmacist's license under this section, see § 73-21-93.

Refusal, suspension, revocation or restriction of license, see § 73-21-97.

RESEARCH REFERENCES

Am Jur. 9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Forms 1 et seq. (licensing and regulation; pharmacists and pharmacies).

§ 73-21-87. Requirements for pharmacist's license by reciprocity or license transfer [Repealed effective July 1, 2020].

(1) To obtain a license to engage in the practice of pharmacy by reciprocity or license transfer, the applicant shall:

(a) Have submitted a written application on the form prescribed by the board;

(b) Be of good moral character;

(c) Have possessed at the time of initial licensure as a pharmacist such other qualifications necessary to have been eligible for licensure at that time in that state;

(d) Have presented to the board proof that any license or licenses granted to the applicant by any other states have not been suspended, revoked, cancelled or otherwise restricted for any reason except nonrenewal or the failure to obtain required continuing education credits; and

(e) Have paid all fees specified by the board for licensure.

(2) No applicant shall be eligible for licensure by reciprocity or license transfer unless the state in which the applicant was initially licensed also grants a reciprocal license or transfer license to pharmacists licensed by this state under like circumstances and conditions.

(3) The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(4) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Laws, 1983, ch. 414, § 9; Laws, 1991, ch. 527, § 9; reenacted, Laws, 1993, ch. 416, § 10; Laws, 1995, ch. 513, § 4; Laws, 1997, ch. 588, § 47; reenacted without change, Laws, 1998, ch. 511, § 10; reenacted without change, Laws, 2002, ch. 501, § 10; reenacted without change, Laws, 2006, ch. 533, § 10; reenacted without change, Laws, 2011, ch. 546, § 9; Laws, 2013, ch. 350, § 21; reenacted without change, Laws, 2016, ch. 448, § 10, eff from and after July 1, 2016.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2). The word "or" was deleted after the word "transfer" so that "No applicant shall be eligible for licensure by reciprocity or license transfer or unless the state … also grants a reciprocal license or transfer license …" now reads as "No applicant shall be eligible for licensure by reciprocity or license transfer unless the state … also grants a reciprocal license or transfer license …" The Joint Committee ratified the correction at its August 5, 2008 meeting.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Establishment of licensure fees, see § 73-21-83.

Licensing of graduates of University of Mississippi School of Pharmacy, see § 73-21-89.

Comparable Laws from other States — Alabama: Code of Ala. § 34-23-51.

Arkansas: A.C.A. § 17-92-308.

Florida: Fla. Stat. § 465.0075.

Georgia: O.C.G.A. § 26-4-42.

Louisiana: La. R.S. § 37:1203.

North Carolina: N.C. Gen. Stat. § 90-85.20.

South Carolina: S.C. Code Ann. § 40-43-81.

Tennessee: Tenn. Code Ann. § 63-10-306.

RESEARCH REFERENCES

Am Jur. 9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Form 2.

§ 73-21-89. Requirements for pharmacist's license for graduates of University of Mississippi School of Pharmacy; termination of provisions [Repealed effective July 1, 2020].

(1) The board shall issue a license to practice pharmacy to any person, if such person be otherwise qualified, upon presentation to the board of:

(a) Satisfactory proof that the applicant has been graduated from the University of Mississippi School of Pharmacy;

(b) Written application for licensure; and

(c) Payment of all fees specified by the board for licensure.

(2) The board shall not issue any new licenses pursuant to this section after June 30, 1987.

(3) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Laws, 1983, ch. 414, § 10; reenacted without change, Laws, 1991, ch. 527, § 10; reenacted without change, Laws, 1993, ch. 416, § 11; Laws, 1997, ch. 588, § 48; reenacted without change, Laws, 1998, ch. 511, § 11; reenacted without change, Laws, 2002, ch. 501, § 11; reenacted without change, Laws, 2006, ch. 533, § 11; reenacted without change, Laws, 2011, ch. 546, § 10; reenacted without change, Laws, 2016, ch. 448, § 11, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Establishment of licensure fees, see § 73-21-83.

RESEARCH REFERENCES

Am Jur. 9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Form 2.

§ 73-21-91. Renewal of licenses; reinstatement upon failure to renew [Repealed effective July 1, 2020].

(1) Every pharmacist shall renew his license annually. To renew his license, a pharmacist shall:

(a) Submit an application for renewal on the form prescribed by the board;

(b) Submit satisfactory evidence of the completion in the last licensure period of such continuing education units as shall be required by the board, but in no case less than one (1) continuing education unit in the last licensure period;

(c)(i) Pay any renewal fees as required by the board, not to exceed One Hundred Dollars ($100.00) for each annual licensing period, provided that the board may add a surcharge of not more than Five Dollars ($5.00) to a license renewal fee to fund a program to aid impaired pharmacists or pharmacy students. Any pharmacist license renewal received postmarked after December 31 of the renewal period will be returned and a Fifty Dollar ($50.00) late renewal fee will be assessed before renewal.

(ii) The license fee for a pharmacy benefit manager shall be set by the board, but shall not exceed Five Hundred Dollars ($500.00). Any license renewal received postmarked after December 31 of the renewal period will be returned and a Five Hundred Dollar ($500.00) late renewal fee will be assessed before renewal.

(2) Any pharmacist who has defaulted in license renewal may be reinstated within two (2) years upon payment of renewal fees in arrears and presentation of evidence of the required continuing education. Any pharmacist defaulting in license renewal for a period in excess of two (2) years shall be required to successfully complete the examination given by the board pursuant to Section 73-21-85 before being eligible for reinstatement as a pharmacist in Mississippi, or shall be required to appear before the board to be examined for his competence and knowledge of the practice of pharmacy, and may be required to submit evidence of continuing education. If the person is found fit by the board to practice pharmacy in this state, the board may reinstate his license to practice pharmacy upon payment of all renewal fees in arrears.

(3) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Laws, 1983, ch. 414, § 11; Laws, 1991, ch. 527, § 11; Laws, 1993, ch. 416, § 12; Laws, 1997, ch. 327, § 1; Laws, 1997, ch. 588, § 49; reenacted without change, Laws, 1998, ch. 511, § 12; reenacted without change, Laws, 2002, ch. 501, § 12; reenacted and amended, Laws, 2006, ch. 533, § 12; Laws, 2007, ch. 309, § 17; Laws, 2009, ch. 377, § 1; Laws, 2010, ch. 316, § 1; reenacted and amended, Laws, 2011, ch. 546, § 30; Laws, 2013, ch. 541, § 2; reenacted and amended, Laws, 2016, ch. 448, § 12, eff from and after July 1, 2016.

Joint Legislative Committee Note — Section 1 of ch. 327, Laws of 1997, amended this section, effective July 1, 1997 (approved March 17, 1997). Section 49 of ch. 588, Laws of 1997, effective July 1, 1997 (approved April 24, 1997), also amended this section. As set out above, this section reflects the language of Section 49 of ch. 588, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Amendment Notes — The 2016 amendment reenacted and amended the section by deleting former (4), which read: "This section shall stand repealed on July 1, 2016."

Cross References — Application of this section to relicensing of persons licensed as pharmacists, see § 73-21-83.

Requirements for pharmacist's license by examination or score transfer, see § 73-21-85.

Issuance of pharmacists' licenses under this section to persons formerly holding assistant pharmacists' licenses, see § 73-21-95.

Authority of board to deny renewal of license and grounds therefore, see § 73-21-97.

Deposit into state treasury of funds received from examination, license and permit fees and monetary penalties, see § 73-21-113.

§ 73-21-93. Examination; frequency and location; scope; facilities [Repealed effective July 1, 2020].

(1) The examination for licensure required under Section 73-21-85 shall be given by the board at least once during each year. The board shall determine the content and subject matter of each examination, the place, time and date of the administration of the examination and those persons who have successfully passed the examination.

(2) The examination shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. The board may employ and cooperate with any organization or consultant in the preparation and grading of an appropriate examination, but shall retain the sole discretion and responsibility of determining which applicants have successfully passed such an examination.

(3) The board shall have authority to use the laboratories of the school of pharmacy and other facilities of the University of Mississippi for the purpose of examining applicants.

SOURCES: Laws, 1983, ch. 414, § 12; reenacted without change, Laws, 1991, ch. 527, § 12; reenacted without change, Laws, 1993, ch. 416, § 13; reenacted without change, Laws, 1998, ch. 511, § 13; reenacted without change, Laws, 2002, ch. 501, § 13; reenacted without change, Laws, 2006, ch. 533, § 13; reenacted without change, Laws, 2011, ch. 546, § 11; reenacted without change, Laws, 2016, ch. 448, § 13, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.
Amendment Notes — The 2016 amendment reenacted the section without change.

§ 73-21-95. Abolition of assistant pharmacist's license; issuance of pharmacists' licenses to persons holding such licenses [Repealed effective July 1, 2020].

The assistant pharmacist license is hereby abolished after April 30, 1984. The board shall issue a license to practice pharmacy to those persons presently holding an assistant pharmacist license upon their meeting the requirements of Section 73-21-91.

SOURCES: Laws, 1983, ch. 414, § 13; reenacted without change, Laws, 1991, ch. 527, § 13; reenacted without change, Laws, 1993, ch. 416, § 14; reenacted without change, Laws, 1998, ch. 511, § 14; reenacted without change, Laws, 2002, ch. 501, § 14; reenacted without change, Laws, 2006, ch. 533, § 14; reenacted without change, Laws, 2011, ch. 546, § 12; reenacted without change, Laws, 2016, ch. 448, § 14, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.
Amendment Notes — The 2016 amendment reenacted the section without change.

JUDICIAL DECISIONS

1.-4. [Reserved for future use.]
5. Under former § 73-21-23.

1.-4. [Reserved for future use.]

5. Under former § 73-21-23.

Mandamus held to lie to compel board of pharmacy to issue license as registered pharmacist to applicant who has been granted license as registered pharmacist in Louisiana on November 17, 1927, and who on March 27, 1931, was granted license as assistant pharmacist by Mississippi Board of Pharmacy. Watkins v. Mississippi State Bd. of Pharmacy, 170 Miss. 26, 154 So. 277 (1934).

Issuance of license as assistant pharmacist by board of pharmacy was recorded adjudication that licensee was of good moral character, as respects his right to license as registered pharmacist, where statute required that, before issuing license as assistant pharmacist, board must find that applicant was of good moral character. Watkins v. Mississippi State Bd. of Pharmacy, 170 Miss. 26, 154 So. 277 (1934).

Board of pharmacy could not refuse license as registered pharmacist on ground that examination as to applicant's moral character when board had issued license as assistant pharmacist was superficial. Watkins v. Mississippi State Bd. of Pharmacy, 170 Miss. 26, 154 So. 277 (1934).

Board of pharmacy could not refuse license as registered pharmacist on ground that there might have been change in applicant's moral character, since board had issued license as assistant pharmacist, where statute authorized review only where licensee was convicted of unlawfully selling habit-forming drugs or intoxicating liquor, and record did not show change in moral character. Watkins v. Mississippi State Bd. of Pharmacy, 170 Miss. 26, 154 So. 277 (1934).

§ 73-21-97. Denial of renewal, suspension, revocation or restrictions on licenses, registrations or permits; grounds; warning or reprimand [Repealed effective July 1, 2020; paragraph (1)(o) repealed effective July 1, 2020].

(1) The board may refuse to issue or renew, or may suspend, reprimand, revoke or restrict the license, registration or permit of any person upon one or more of the following grounds:

(a) Unprofessional conduct as defined by the rules and regulations of the board;

(b) Incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, confidence and safety to the public;

(c) Being found guilty by a court of competent jurisdiction of one or more of the following:

(i) A felony;

(ii) Any act involving moral turpitude or gross immorality; or

(iii) Violation of pharmacy or drug laws of this state or rules or regulations pertaining thereto, or of statutes, rules or regulations of any other state or the federal government;

(d) Fraud or intentional misrepresentation by a licensee or permit holder in securing the issuance or renewal of a license or permit;

(e) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without a license;

(f) Violation of any of the provisions of this chapter or rules or regulations adopted pursuant to this chapter;

(g) Failure to comply with lawful orders of the board;

(h) Negligently or willfully acting in a manner inconsistent with the health or safety of the public;

(i) Addiction to or dependence on alcohol or controlled substances or the unauthorized use or possession of controlled substances;

(j) Misappropriation of any prescription drug;

(k) Being found guilty by the licensing agency in another state of violating the statutes, rules or regulations of that jurisdiction;

(*l*) The unlawful or unauthorized possession of a controlled substance;

(m) Willful failure to submit drug monitoring information or willful submission of incorrect dispensing information as required by the Prescription Monitoring Program under Section 73-21-127;

(n) Failure to obtain the license, registration or permit required by this chapter; or

(o) Violation(s) of the provisions of Sections 41-121-1 through 41-121-9 relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2020.

(2) In lieu of suspension, revocation or restriction of a license as provided for above, the board may warn or reprimand the offending pharmacist.

(3) In addition to the grounds specified in subsection (1) of this section, the board shall be authorized to suspend the license, registration or permit of any person for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license, registration or permit for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license, registration or permit suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license, registration or permit suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1983, ch. 414, § 14; Laws, 1991, ch. 527, § 14; Laws, 1992, ch. 531 § 4; Laws, 1993, ch. 416, § 15; Laws, 1994, ch. 513, § 4; Laws, 1996, ch. 507, § 48; reenacted without change, Laws, 1998, ch. 511, § 15; reenacted without change, Laws, 2002, ch. 501, § 15; reenacted without change, Laws, 2006, ch. 533, § 15; Laws, 2008, ch. 516, § 2; reenacted and amended, Laws, 2011, ch. 546, § 13; Laws, 2012, ch. 409, § 8; Laws, 2016, ch. 419, § 11; reenacted without change, Laws, 2016, ch. 448, § 15, eff from and after July 1, 2016.

Joint Legislative Committee Note — Section 11 of ch. 419, Laws of 2016, effective from and after July 1, 2016, (approved April 14, 2016), amended this section. Section 15 of ch. 448, Laws of 2016, effective from and after July 1, 2016 (approved April 20, 2016), reenacted this section without change. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 5, 2016, meeting of the Committee.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The first 2016 amendment (ch. 419) extended the repealer for paragraph (1)(o) by substituting "July 1, 2020" for "July 1, 2016" at the end of (1)(o).

The second 2016 amendment (ch. 448) reenacted the section without change.

Cross References — Suspension or revocation of registration to dispense controlled substances under Uniform Controlled Substances Law, see § 41-29-129.

Suspension or revocation of license or registration of apothecary for violation of Uniform Narcotic Drug Law, see § 41-29-311.

Hearings on violations and procedure therefor, see § 73-21-99.

Appeal from adverse action on license, registration or permit, see § 73-21-101.

Penalties for violations, § 73-21-103.

Monetary penalty for knowingly failing to submit drug monitoring information or knowingly submitting incorrect dispensing information, see § 73-21-103.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

Criminal offense of druggist selling alcohol or filling prescription for alcohol other than upon physician's certificate, see § 97-31-45.

JUDICIAL DECISIONS

1. In general.
2.-4. [Reserved for future use.]
5. Under former § 73-21-39.
6. Under former § 73-21-61.

1. In general.

Revocation of a pharmacist's license and permits was not unreasonable or an abuse of discretion where the State Board of Pharmacy found 344 violations of the regulations prohibiting licensees and permittees from dispensing drugs and controlled substances without a valid prescription and prohibiting refilling a prescription at a greater frequency than the physician practitioner prescribes. Riddle v. Mississippi State Bd. of Pharmacy, 592 So. 2d 37 (Miss. 1991).

The failure of an administrative agency to make findings of facts is generally not, alone, cause for reversal. For example, a lack of requisite findings of fact is not fatal where it is clear, from the circumstances, that the only defect is the agency's failure to recite expressly the facts found, but that it otherwise proceeded upon a correct theory of law, or where it is manifest that the omission does not impede proper review by the reviewing court. Thus, the Board of Pharmacy's failure to make findings of fact did not warrant reversal of the Board's decision to revoke a pharmacist's license, where the pharmacist admitted to all the charges against him, so that there was no conflicting evidence and therefore no reason to make any findings of fact. Duckworth v. Mississippi State Bd. of Pharmacy, 583 So. 2d 200 (Miss. 1991).

2.-4. [Reserved for future use.]

5. Under former § 73-21-39.

Subdivision (1) of former § 73-21-39 and Code 1972 § 73-21-13(a), (b), and (f) do not expressly grant to the State Board of Pharmacy the power to enact a rule prohibiting the advertising of discount prices on prescription drugs, nor could such power be implied from the statutory language. Mississippi State Bd. of Pharmacy v. Steele, 317 So. 2d 33 (Miss. 1975).

A charge brought against a pharmacist by the state board of pharmacy in a proceeding to revoke his license, in which it was stated that he appeared to have violated statutes listing prohibited acts in relation to drugs and the statute governing the keeping of records by pharmacists, in that he did not keep adequate records particularly on or about a specified date, was not adequate to inform the pharmacist of the nature of the charge against him so as to permit him to prepare a defense, and thus constituted grounds for reversal of the order revoking his license. Miller v. State Bd. of Pharmacy, 262 So. 2d 188 (Miss. 1972).

6. Under former § 73-21-61.

Board of pharmacy could not refuse license as registered pharmacist on ground that there might have been change in applicant's moral character since board had issued license as assistant pharmacist, where statute authorized review only where licensee was convicted of unlawfully selling habit-forming drugs or intoxicating liquor, and record did not show change in moral character. Watkins v. Mississippi State Bd. of Pharmacy, 170 Miss. 26, 154 So. 277 (1934).

RESEARCH REFERENCES

ALR. Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotic or stimulant drugs. 17 A.L.R.3d 1408.

Giving, selling, or prescribing dangerous drugs as contributing to the delinquency of a minor. 36 A.L.R.3d 1292.

Criminality of act of directing to, or recommending, source from which illicit drugs may be purchased. 42 A.L.R.3d 1072.

Liability of pharmacist who accurately fills prescription for harm resulting to user. 44 A.L.R.5th 393.

Civil liability of pharmacist or druggists for failure to warn of potential drug interactions in use of prescription drug. 79 A.L.R.5th 409.

Am Jur. 25 Am. Jur. 2d, Drugs §§ 72 et seq., 90, 91 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Forms 1 et seq. (licensing and regulation; pharmacists and pharmacies).

CJS. 28 C.J.S., Drugs and Narcotics §§ 87-90 et seq.

§ 73-21-99. Hearings on violations; notice; procedure [Repealed effective July 1, 2020].

(1) Disciplinary action by the board against a licensee, registrant or permit holder, or license, registration or permit shall require the following:

(a) A sworn affidavit filed with the board charging a licensee or permit holder with an act which is grounds for disciplinary action as provided in Section 73-21-97; and

(b) An order of the Investigations Review Committee of the board which shall cause the executive director of the board to fix a time and place for a hearing by the board. The executive director shall cause a written notice specifying the offense or offenses for which the licensee or permit holder is charged and notice of the time and place of the hearing to be served upon the licensee or permit holder at least thirty (30) days prior to the hearing date. Such notice may be served by mailing a copy thereof by certified mail, postage prepaid, to the last-known residence or business address of the licensee or permit holder.

(2) The board shall designate two (2) of its members to serve on a rotating no longer than three-consecutive-month basis with the executive director and legal counsel for the board as an Investigations Review Committee, and the board's investigators shall provide status reports solely to the Investigations Review Committee during monthly meetings of the board. Such reports shall be made on all on-going investigations, and shall apply to any routine inspections which may give rise to the filing of a complaint. In the event any complaint on a licensee comes before the board for possible disciplinary action, the members of the board serving on the Investigations Review Committee which reviewed the investigation of such complaint shall recuse themselves and not participate in the disciplinary proceeding.

(3) The board acting by and through its Investigation Review Committee may, if deemed necessary, issue a letter of reprimand to any licensee, registrant or permit holder in lieu of formal action by the board.

(4) The board, acting by and through its executive director, is hereby authorized and empowered to issue subpoenas for the attendance of witnesses and the production of books and papers at such hearing. Process issued by the board shall extend to all parts of the state and shall be served by any person designated by the board for such service.

(5) The accused shall have the right to appear either personally or by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the board.

(6) At the hearing, the board shall administer oaths as may be necessary for the proper conduct of the hearing. All hearings shall be conducted by the board, which shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be based upon sufficient evidence to sustain it.

(7) Where, in any proceeding before the board, any witness fails or refuses to attend upon a subpoena issued by the board, refuses to testify, or refuses to produce any books and papers the production of which is called for by a subpoena, the attendance of such witness, the giving of his testimony or the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(8) The board shall, within thirty (30) days after conclusion of the hearing, reduce its decision to writing and forward an attested true copy thereof to the last-known residence or business address of such licensee or permit holder by way of United States first-class, certified mail, postage prepaid.

SOURCES: Laws, 1983, ch. 414, § 15; reenacted without change, Laws, 1991, ch. 527, § 15; Laws, 1992, ch. 531 § 5; Laws, 1993, ch. 416, § 16; Laws, 1994, ch. 513, § 5; reenacted without change, Laws, 1998, ch. 511, § 16; reenacted without change, Laws, 2002, ch. 501, § 16; reenacted without change, Laws, 2006, ch. 533, § 16; reenacted and amended, Laws, 2011, ch. 546, § 14; reenacted without change, Laws, 2016, ch. 448, § 16, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Suspension or revocation of registration to dispense controlled substances under Uniform Controlled Substances Law, see § 41-29-129.

Suspension or revocation of license or registration of apothecary for violation of Uniform Narcotic Drug Law, see § 41-29-311.

Appeal from adverse action on license, registration or permit, see § 73-21-101.

Penalties for violations, reinstatement of licenses and permits, and enforcement proceedings, see § 73-21-103.

Manner by which alcohol may be dispensed by druggist, see §§ 97-31-37 et seq.

JUDICIAL DECISIONS

1. In general.

A pharmacist, whose license was revoked by the Board of Pharmacy, was not deprived of his right to retain counsel, in spite of his argument that he was denied procedural due process when the Board's agent implied that the charges against him were not serious in nature and thereby coerced him into not retaining counsel, where the agent merely stated that the decision to retain an attorney for the hearing was the pharmacist's choice and told him "You may just want to go down and talk to them, though," the pharmacist received notice that clearly highlighted his right to retain counsel, and the notice clearly stated that the charges could result in suspension or revocation of his pharmacy license. Duckworth v. Mississippi State Bd. of Pharmacy, 583 So. 2d 200 (Miss. 1991).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs §§ 90, 91 et seq.

CJS. 28 C.J.S., Drugs and Narcotics §§ 87-90 et seq.

§ 73-21-101. Appeal from adverse action on a license, registration or permit; scope of review [Repealed effective July 1, 2020].

(1) The right to appeal from the action of the board in denying, revoking, suspending or refusing to renew any license, registration or permit issued by the board, or fining or otherwise disciplining any person is hereby granted. Such appeal shall be to the chancery court of the county of the residence of the licensee or permit holder on the record made, including a verbatim transcript of the testimony at the hearing. The appeal shall be taken within thirty (30) days after notice of the action of the board in denying, revoking, suspending or refusing to renew the license or permit, or fining or otherwise disciplining the person. The appeal shall be perfected upon filing notice of the appeal and by the prepayment of all costs, including the cost of the preparation of the record of the proceedings by the board, and the filing of a bond in the sum of Two Hundred Dollars ($200.00), conditioned that if the action of the board in denying, revoking, suspending or refusing to renew the license or permit, or fining or otherwise disciplining the person, be affirmed by the chancery court, the licensee or permit holder will pay the costs of the appeal and the action in the chancery court.

(2) If there is an appeal, such appeal shall act as a supersedeas. The chancery court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may, in the discretion of the chancellor, be tried in vacation. The scope of review of the chancery court shall be limited to a review of the record made before the board to determine if the action of the board is unlawful for the reason that it was (a) not supported by substantial evidence, (b) arbitrary or capricious, (c) beyond the power of the board to make, or (d) in violation of some statutory or constitutional right of the appellant. The decision of the chancery court may be appealed to the Supreme Court in the manner provided by law.

(3) Actions taken by the board in suspending a license, registration or permit when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a suspension of a license, registration or permit that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SOURCES: Laws, 1983, ch. 414, § 16; Laws, 1990, ch. 514, § 1; reenacted, Laws, 1991, ch. 527, § 16; Laws, 1992, ch. 531 § 6: reenacted, Laws, 1993, ch. 416, § 17; Laws, 1994, ch. 513, § 6; Laws, 1996, ch. 507, § 49; reenacted without change, Laws, 1998, ch. 511, § 17; reenacted without change, Laws, 2002, ch. 501, § 17; reenacted without change, Laws, 2006, ch. 533, § 17; reenacted without change, Laws, 2011, ch. 546, § 15; reenacted without change, Laws, 2016, ch. 448, § 17, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Time for payment to board of assessed monetary penalty, see § 73-21-103.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs §§ 90, 91 et seq.

CJS. 28 C.J.S., Drugs and Narcotics §§ 97, 98.

§ 73-21-103. Penalties for violations; requirement of rehabilitation or additional education; reinstatement of licenses or permits; enforcement proceedings [Repealed effective July 1, 2020].

(1) Upon the finding of the existence of grounds for action against any permitted facility or discipline of any person holding a license, registration or permit, seeking a license, registration or permit, seeking to renew a license or permit under the provisions of this chapter, or practicing or doing business without a license, registration or permit, the board may impose one or more of the following penalties:

(a) Suspension of the offender's license, registration and/or permit for a term to be determined by the board;

(b) Revocation of the offender's license, registration and/or permit;

(c) Restriction of the offender's license, registration and/or permit to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy in a particular manner for a term to be determined by the board;

(d) Imposition of a monetary penalty as follows:

(i) For the first violation, a monetary penalty of not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00) for each violation;

(ii) For the second violation and subsequent violations, a monetary penalty of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00) for each violation.

Money collected by the board under paragraph (d)(i), (ii) and (iv) of this section shall be deposited to the credit of the State General Fund of the State Treasury;

(iii) The board may assess a monetary penalty for those reasonable costs that are expended by the board in the investigation and conduct of a proceeding for licensure revocation, suspension or restriction, including, but not limited to, the cost of process service, court reporters, expert witnesses and investigators.

Money collected by the board under paragraph (d)(iii) of this section, shall be deposited to the credit of the Special Fund of the Pharmacy Board;

(iv) The board may impose a monetary penalty for those facilities/businesses registered with the Pharmacy Board as wholesalers/manufacturers of not less than Three Hundred Dollars ($300.00) per violation and not more than Fifty Thousand Dollars ($50,000.00) per violation;

(v) The board may impose a monetary penalty for any dispenser, pharmacist or practitioner licensed to dispense controlled substance and specified noncontrolled substance drugs, who knowingly fails to submit drug monitoring information or knowingly submits incorrect dispensing information of not more than Ten Thousand Dollars ($10,000.00) per violation. Any penalty collected under this paragraph (v) shall be deposited into the special fund of the State Pharmacy Board to support the operations of the Prescription Monitoring Program (PMP);

(vi) The board may impose a monetary penalty for any person who obtains prescription information and who knowingly discloses this information for misuse or purposely alters the reporting information, or uses the PMP in any manner other than for which it was intended, of not more than Fifty Thousand Dollars ($50,000.00) per violation. Any penalty collected under this paragraph (vi) shall be deposited into the special fund of the State Board of Pharmacy and used to support the operations of the Prescription Monitoring Program;

(vii) The board may impose a monetary penalty of not more than One Thousand Dollars ($1,000.00) per day upon any person or business that practices or does business without the license, registration or permit required by this chapter.

(e) Refusal to renew offender's license, registration and/or permit;

(f) Placement of the offender on probation and supervision by the board for a period to be determined by the board;

(g) Public or private reprimand.

Whenever the board imposes any penalty under this subsection, the board may require rehabilitation and/or additional education as the board may deem proper under the circumstances, in addition to the penalty imposed.

(2) Any person whose license, registration and/or permit has been suspended, revoked or restricted pursuant to this chapter, whether voluntarily or

by action of the board, shall have the right to petition the board at reasonable intervals for reinstatement of such license, registration and/or permit. Such petition shall be made in writing and in the form prescribed by the board. Upon investigation and hearing, the board may, in its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications. The procedure for the reinstatement of a license, registration or permit that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(3) Nothing herein shall be construed as barring criminal prosecutions for violation of this chapter where such violations are deemed as criminal offenses in other statutes of this state or of the United States.

(4) A monetary penalty assessed and levied under this section shall be paid to the board by the licensee, registrant or permit holder upon the expiration of the period allowed for appeal of such penalties under Section 73-21-101, or may be paid sooner if the licensee, registrant or permit holder elects.

(5) When payment of a monetary penalty assessed and levied by the board against a licensee, registrant or permit holder in accordance with this section is not paid by the licensee, registrant or permit holder when due under this section, the board shall have the power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county and judicial district of residence of the licensee, registrant or permit holder, or if the licensee, registrant or permit holder is a nonresident of the State of Mississippi, in the Chancery Court of the First Judicial District of Hinds County, Mississippi. When such proceedings are instituted, the board shall certify the record of its proceedings, together with all documents and evidence, to the chancery court and the matter shall thereupon be heard in due course by the court, which shall review the record and make its determination thereon. The hearing on the matter may, in the discretion of the chancellor, be tried in vacation.

(6) The board shall develop and implement a uniform penalty policy which shall set the minimum and maximum penalty for any given violation of board regulations and laws governing the practice of pharmacy. The board shall adhere to its uniform penalty policy except in such cases where the board specifically finds, by majority vote, that a penalty in excess of, or less than, the uniform penalty is appropriate. Such vote shall be reflected in the minutes of the board and shall not be imposed unless such appears as having been adopted by the board.

SOURCES: Laws, 1983, ch. 414, § 17; Laws, 1991, ch. 527, § 17; Laws, 1992, ch. 531 § 7; Laws, 1993, ch. 416, § 18; Laws, 1994, ch. 513, § 7; Laws, 1996, ch. 507, § 50; reenacted without change, Laws, 1998, ch. 511, § 18; reenacted without change, Laws, 2002, ch. 501, § 18; Laws, 2005, ch. 355, § 1; reenacted without change, Laws, 2006, ch. 533, § 18; Laws, 2008, ch. 516, § 3;

reenacted and amended, Laws, 2011, ch. 546, § 16; reenacted and amended, Laws, 2016, ch. 448, § 18, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted and amended the section by adding "(PMP)" at the end of (1)(d)(v), and by, in (1)(d)(vi), substituting "penalty for any person who obtains prescription" for "penalty for a person authorized to obtain prescription," inserting "or uses the PMP in any manner other than for which it was intended" and substituting "more than Fifty" for "more that Fifty."

Cross References — Revocation, suspension, restriction or refusal to issue or renew a permit for persons providing home medical equipment, see § 73-21-108.

Willful failure to submit drug monitoring information or willful submission of incorrect dispensing information as grounds for disciplinary action against a licensee, see § 73-21-97.

Disposition of monetary penalties received by state board of pharmacy, see § 73-21-113.

Injunctions to restrain illegal practice of profession, see § 73-51-1.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

JUDICIAL DECISIONS

1. In general.

Revocation of a pharmacist's license and permits was not unreasonable or an abuse of discretion where the State Board of Pharmacy found 344 violations of the regulations prohibiting licensees and permittees from dispensing drugs and controlled substances without a valid prescription and prohibiting refilling a prescription at a greater frequency than the physician practitioner prescribes. Riddle v. Mississippi State Bd. of Pharmacy, 592 So. 2d 37 (Miss. 1991).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs §§ 90, 91 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics and Poisons, Form 3.

CJS. 28 C.J.S., Drugs and Narcotics §§ 87-90 et seq.

Practice References. Woodside, Drug Product Liability (Matthew Bender).

§ 73-21-105. Registration of businesses where prescription drugs or devices are dispensed, sold, repackaged, manufactured, etc.; registration of reverse distributors; establishment of criteria; procedures and fees; applications; standards for operation; reports of changes of circumstances; penalties for violations; exemption of physicians, dentists, etc., from chapter [Repealed effective July 1, 2020].

(1) Every facility/business that engages in the wholesale distribution of prescription drugs, to include without limitation, manufacturing in this state, distribution into this state, or selling or offering to sell in this state, or distribution from or within this state, and every reverse distributor located in or outside of this state that conducts business with pharmacies in this state, shall register biennially or annually, to be determined by the board, with the Mississippi State Board of Pharmacy by applying for a permit on a form

supplied by the board and accompanied by a fee as set by subsection (4) of this section. The Pharmacy Board shall by regulation determine the classification of permit(s) that shall be required.

(2) Every business/facility/pharmacy located in this state that engages in or proposes to engage in the dispensing and delivery of prescription drugs to consumers shall register with the Mississippi State Board of Pharmacy by applying for a permit on a form supplied by the board and accompanied by a fee as set by subsection (4) of this section. The Pharmacy Board shall by regulation determine the classification of permit(s) that shall be required.

(3) The board shall establish by rule or regulation the criteria which each business shall meet to qualify for a permit in each classification. The board shall issue a permit to any applicant who meets the criteria as established. The board may issue various types of permits with varying restrictions to businesses where the board deems it necessary by reason of the type of activities conducted by the business requesting a permit.

(4) The board shall specify by rule or regulation the registration procedures to be followed, including, but not limited to, specification of forms for use in applying for such permits and times, places and fees for filing such applications. However, the biennial fee for an original or renewal permit shall not exceed One Thousand Dollars ($1,000.00).

(5) Applications for permits shall include the following information about the proposed business:

(a) Ownership;

(b) Location;

(c) Identity of the responsible person or pharmacist licensed to practice in the state, who shall be the pharmacist in charge of the pharmacy, where one is required by this chapter, and such further information as the board may deem necessary.

(6) Permits issued by the board pursuant to this section shall not be transferable or assignable.

(7) The board shall specify by rule or regulation minimum standards for the responsibility in the conduct of any business/facility and/or pharmacy that has been issued a permit. The board is specifically authorized to require that the portion of the facility located in this state to which a pharmacy permit applies be operated only under the direct supervision of no less than one (1) pharmacist licensed to practice in this state, and to provide such other special requirements as deemed necessary. Nothing in this subsection shall be construed to prevent any person from owning a pharmacy.

(8) All businesses permitted by the board shall report to the board the occurrence of any of the following changes:

(a) Permanent closing;

(b) Change of ownership, management, location or pharmacist in charge;

(c) Any and all other matters and occurrences as the board may require by rule or regulation.

(9) Disasters, accidents and emergencies which may affect the strength, purity or labeling of drugs, medications, devices or other materials used in the

diagnosis or the treatment of injury, illness and disease shall be immediately reported to the board.

(10) No business that is required to obtain a permit shall be operated until a permit has been issued for such business by the board. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or imprisonment in the county jail for not less than thirty (30) days nor more than ninety (90) days, or by both such fine and imprisonment. However, the provisions of this chapter shall not apply to physicians, dentists, veterinarians, osteopaths or other practitioners of the healing arts who are licensed under the laws of the State of Mississippi and are authorized to dispense and administer prescription drugs in the course of their professional practice.

SOURCES: Laws, 1983, ch. 414, § 18; Laws, 1991, ch. 527, § 18; Laws, 1993, ch. 416, § 19; Laws, 1994, ch. 513, § 8; reenacted without change, Laws, 1998, ch. 511, § 19; reenacted without change, Laws, 2002, ch. 501, § 19; reenacted without change, Laws, 2006, ch. 533, § 19; Laws, 2008, ch. 512, § 3; Laws, 2010, ch. 555, § 1; reenacted without change, Laws, 2011, ch. 546, § 17; reenacted and amended, Laws, 2016, ch. 448, § 19, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted and amended the section by inserting "or annually, to be determined by the board" in the first sentence of (1), and substituting "One Thousand Dollars ($1,000.00)" for "Five Hundred Dollars ($500.00)" in (4).

Cross References — For definition of "reverse distributor," see § 73-21-73.

Denial of renewal and suspension, revocation or restrictions on permits, see § 73-21-97.

Appeals from adverse actions on permits, see § 73-21-101.

Penalties for violations, and reinstatement of permits, see § 73-21-103.

Registration requirement for nonresident pharmacies that ship, mail or deliver drugs into state, see § 73-21-106.

Authority of board or its representative to inspect premises subject to permit under this section, see § 73-21-107.

Prohibition against use of certain terms in business name by persons not holding permit under this section, see § 73-21-109.

Registration of pharmacy technicians, see § 73-21-111.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs §§ 62 et seq.

CJS. 28 C.J.S., Drugs and Narcotics §§ 65-68, 74, 75.

§ 73-21-106. Registration requirement for nonresident pharmacies that ship, mail, or deliver drugs into state [Repealed effective July 1, 2020].

(1) Any pharmacy located outside this state that ships, mails or delivers, in any manner, controlled substances or prescription or legend drugs or devices into this state shall be considered a nonresident pharmacy and shall be permitted by the board. The board shall establish by rule or regulation the criteria that each nonresident pharmacy must meet to qualify for a nonresident permit. After a permit has been issued, it may not be amended, transferred or reassigned. A pharmacist-in-charge of a nonresident pharmacy may not be the pharmacist-in-charge at any other location that has been issued a permit by the board.

(2) Each nonresident pharmacy shall:

(a) Comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board under this section. The nonresident pharmacy shall maintain at all times a valid unexpired license, permit or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to being permitted by the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located;

(b) Maintain its records of controlled substances and prescription or legend drugs or devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs dispensed; and

(c) Certify that it understands Mississippi pharmacy laws and regulations and agrees to comply with those laws and regulations and any other state or federal laws that apply to the practice of pharmacy. The pharmacist-in-charge must hold a Mississippi pharmacist license, be licensed to practice pharmacy in the state of residence of the nonresident pharmacy, and be current and in good standing with the licensing boards of both states.

(3) Any pharmacy subject to this section shall provide during its regular hours of operation, but not less than six (6) days per week and for a minimum of forty (40) hours per week, a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(4) The permit fee for nonresident pharmacies shall be the same as the fee as set by subsection (4) of Section 73-21-105.

(5) The permit requirements of this section shall apply to any nonresident pharmacy that dispenses, distributes, ships, mails or delivers controlled substances or prescription or legend drugs and devices into this state directly to a consumer.

(6) The board may deny, revoke or suspend a nonresident pharmacy permit only for:

(a) Failure to comply with any requirement of this section or Section 41-29-125;

(b) Conduct that causes serious bodily or serious psychological injury to a resident of this state if the board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and the regulatory or licensing agency fails to initiate an investigation within forty-five (45) days of the referral; or

(c) Violation of the Uniform Controlled Substances Law.

(7) It is unlawful for any nonresident pharmacy that is not permitted under this section to advertise its services in this state, or for any person who is a resident of this state to advertise the pharmacy services of a nonresident pharmacy that is not permitted with the board, with the knowledge that the advertisement will or is likely to induce members of the public in this state to use the pharmacy to fill prescriptions.

(8) When requested to do so by the board or the Mississippi Bureau of Narcotics, each nonresident pharmacy shall supply any inspection reports, controlled substances dispensing records, warning notices, notice of deficiency reports or any other related reports from the state in which it is located concerning the operation of a nonresident pharmacy for review of compliance with state and federal drug laws.

SOURCES: Laws, 1994, ch. 513, § 9; Laws, 2009, ch. 469, § 2; Laws, 2011, ch. 466, § 3; Laws, 2011, ch. 546, § 33; reenacted and amended, Laws, 2016, ch. 448, § 20, eff from and after July 1, 2016.

Joint Legislative Committee Note — Section 3 of ch. 466, Laws of 2011, effective from and after July 1, 2011 (approved March 11, 2011), amended this section. Section 33 of ch. 546, Laws of 2011, effective from and after passage (approved April 26, 2011), also amended this section. As set out above, this section reflects the language of Section 33 of ch. 546, Laws of 2011, which contains language that specifically provides that it supersedes § 73-21-106 as amended by Laws of 2011, ch. 466.

Amendment Notes — The 2016 amendment reenacted and amended the section by rewriting (1), which read: "Any pharmacy located outside this state that ships, mails or delivers, in any manner, controlled substances or prescription or legend drugs or devices into this state shall be considered a nonresident pharmacy, shall be permitted by the board, and shall," adding (2), deleting former (a), which read: "Disclose to the board the location, names, and titles of all principal corporate officers and all pharmacists-in-charge. A report containing this information shall be made on an annual basis and within thirty (30) days after any change of office, corporate officer or pharmacist-in-charge," redesignating former (b) through (d) as (a) through (c), and redesignating former (2) through (7) as (3) through (8).

Cross References — Uniform Controlled Substances Law, see §§ 41-29-101 et seq.

Requirement that controlled substance shipped or mailed to private residence be delivered only to person 18 or older, see § 41-29-125.

Requirement that controlled substance shipped or mailed to private residence be delivered only to person 18 or older, see § 41-29-125.

§ 73-21-107. Inspection of permittee's facility and records; scope [Repealed effective July 1, 2020].

(1) The board or its representative may enter and inspect, during reasonable hours, a facility which has obtained or applied for a permit under Section 73-21-105 relative to the following:

(a) Drug storage and security;

(b) Equipment;

(c) Sanitary conditions; or

(d) Records, reports, or other documents required to be kept or made under this chapter or the Uniform Controlled Substances Law (Section 41-29-101 et seq.) or rules and regulations adopted under such laws.

(2) Prior to an entry and inspection, the board representative shall state his purpose and present appropriate credentials to the owner, pharmacist or agent in charge of a facility.

(3) The board representative may:

(a) Inspect and copy records, reports, and other documents required to be kept or made under this chapter, the Uniform Controlled Substances Law, or rules and regulations adopted under such laws;

(b) Inspect, within reasonable limits and in a reasonable manner, a facility's storage, equipment, security, records, or prescription drugs or devices; or

(c) Inventory any stock of any prescription drugs or devices in the facility.

(4) Unless the owner, pharmacist, or agent in charge of the facility consents in writing, an inspection authorized by this section may not extend to:

(a) Financial data;

(b) Sales data other than shipment data; or

(c) Pricing data.

SOURCES: Laws, 1983, ch. 414, § 19; reenacted without change, Laws, 1991, ch. 527, § 19; reenacted without change, Laws, 1993, ch. 416, § 20; reenacted without change, Laws, 1998, ch. 511, § 21; reenacted without change, Laws, 2002, ch. 501, § 21; reenacted without change, Laws, 2006, ch. 533, § 20; reenacted without change, Laws, 2011, ch. 546, § 18; reenacted without change, Laws, 2016, ch. 448, § 21, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted the section without change.

RESEARCH REFERENCES

ALR. Application, to drug or narcotic records maintained by druggist or physician, of "required records" exception to privilege against self-incrimination. 96 A.L.R. Fed. 868.

§ 73-21-108. Permit requirements for persons providing home medical equipment [Repealed effective July 1, 2020].

(1) **Definitions.** — For the purposes of this section:

(a) "Home medical equipment" means technologically sophisticated medical equipment and devices usable in a home care setting, including, but not limited to:

(i) Oxygen for human consumption, oxygen concentrators and/or oxygen delivery systems and equipment;

(ii) Ventilators;

(iii) Respiratory disease management devices;

(iv) Electronic and computer driven wheelchairs and seating systems;

(v) Apnea monitors;

(vi) Transcutaneous electrical nerve stimulator (TENS) units;

(vii) Low air loss cutaneous pressure management devices;

(viii) Sequential compression devices;

(ix) Neonatal home phototherapy devices;

(x) Feeding pumps; and

(xi) Other similar equipment as defined in regulations adopted by the board.

The term "home medical equipment" does not include medical equipment used in the normal course of treating patients by hospitals, hospices, long-term care facilities or home health agencies, or medical equipment used or dispensed by health care professionals licensed by the State of Mississippi if the professional is practicing within the scope of his or her professional practice. In addition, the term does not include items such as upper and lower extremity prosthetics, canes, crutches, walkers, bathtub grab bars, standard wheelchairs, commode chairs and bath benches.

(b) "Home medical equipment services" means the delivery, installation, maintenance, replacement, and/or instruction in the use of home medical equipment, used by a sick or disabled individual, to allow the individual to be cared for and maintained in a home or noninstitutional environment.

(c) "Medical gas" means those gases and liquid oxygen intended for human consumption.

(d) "Order" means an order issued by a licensed practitioner legally authorized to order home medical equipment and/or medical gases.

(2) **Permit required.** — (a) No person, business or entity located in this state or outside of this state that is subject to this section shall sell, rent or provide or offer to sell, rent or provide directly to patients in this state any home medical equipment, legend devices, and/or medical gas unless such person, business or entity first obtains a Medical Equipment Supplier Permit from the board.

(b) The permitting requirements of this section apply to all persons, companies, agencies and other business entities that are in the business of supplying home medical equipment to patients in their places of residence and that bill the patient or the patient's insurance, Medicare, Medicaid or other third party payor for the rent or sale of that equipment.

(c) The board shall require a separate permit for each facility location directly or indirectly owned or operated in this state.

(d) The application for a permit shall be made to the board on a form supplied by the board and shall be accompanied by a fee of not more than Three Hundred Dollars ($300.00), as prescribed by the board. Once issued, every permit must be renewed annually, and the renewal fee shall be not more than One Hundred Seventy-five Dollars ($175.00), as prescribed by the board.

(e) All permits issued under this section shall expire annually on June 30 of each year. Applications for renewal must be made to the board on or before June 30 and must be accompanied by the fee as prescribed by the board. A late renewal fee of One Hundred Dollars ($100.00) shall be added to all renewal applications received by the board after June 30 of each renewal period. The permit shall become void if the renewal application, renewal fee and the late renewal fee are not received by the board by September 30 of each year.

(3) **Exemptions.** — (a) The permitting requirements of this section do not apply to the following entities or practitioners unless they have a separate business entity, company, corporation or division that is in the business of providing home medical equipment for sale or rent to patients at their places of residence:

(i) Home health agencies;

(ii) Hospitals;

(iii) Wholesalers and/or manufacturers;

(iv) Medical doctors, physical therapists, respiratory therapists, occupational therapists, speech pathologists, optometrists, chiropractors and podiatrists who use home medical equipment and/or legend devices in their individual practices;

(v) Pharmacies;

(vi) Hospice programs;

(vii) Nursing homes and/or long-term care facilities;

(viii) Veterinarians; dentists; and emergency medical services.

(b) Although community pharmacies are exempt from the permitting requirements of this section, they shall be subject to the same regulations that are applicable to permitted businesses or entities for the sale or rental of home medical equipment covered by this section.

(c) Nothing in this section shall prohibit trained individuals from using oxygen, liquid oxygen and/or legend devices in emergencies.

(d) Nothing in this section shall prohibit the prehospital emergency administration of oxygen by licensed health care providers, emergency medical technicians, first responders, fire fighters, law enforcement officers and other emergency personnel trained in the proper use of emergency oxygen.

(4) **Order required.** — Home medical equipment suppliers shall not provide any home medical equipment to a patient without a valid order from an authorized licensed practitioner.

(5) **Regulations.** — The board shall adopt regulations for the distribution and sale or rental of home medical equipment, legend devices and medical gases that promote the public health and welfare and comply with at least the minimum standards, terms and conditions of federal laws and regulations. The regulations shall include, without limitation:

(a) Minimum information from each home medical equipment, legend device and medical gas supplier required for permitting and renewal permits;

(b) Minimum qualifications of persons who engage in the distribution of home medical equipment;

(c) Appropriate education, training or experience of persons employed by home medical equipment suppliers;

(d) Minimum standards for storage of home medical equipment;

(e) Minimum requirements for the establishment and maintenance of all records for the sale, rental and servicing of home medical equipment; and

(f) Minimum standards of operation and professional conduct.

(6) **Medical Equipment Advisory Committee to the board.** —

(a) A Medical Equipment Advisory Committee (MEAC), composed of three (3) members selected by the Mississippi Association of Medical Equipment Suppliers and approved by the board, shall review and make recommendations to the board regarding all regulations dealing with home medical equipment, legend devices and medical gases that are proposed by the board and before they are adopted by the board.

(b) All MEAC members must have been actively involved in the home medical equipment business for a minimum of five (5) years before the selection to the committee and shall hold and maintain, in good standing, a permit issued by the board under this section.

(c) The MEAC members shall meet at least quarterly and review all home medical equipment suppliers' inspection reports. All complaints and reports of investigations of violations of law or regulations regarding home medical equipment, legend devices and medical gases shall first be reviewed by the MEAC. After review, the MEAC may make recommendations to the board's Investigations Review Committee regarding further administrative action by the board.

(d) The MEAC shall keep and maintain minutes of all meetings of the MEAC and shall provide copies of the minutes to the board on a quarterly basis.

(7) **Revocation, suspension or restriction of permit and penalties.** —

(a) The board may revoke, suspend, restrict or refuse to issue or renew a permit or impose a monetary penalty, in accordance with Section 73-21-103 except that the monetary penalty shall not exceed Ten Thousand Dollars ($10,000.00) per violation, if the business or holder of a permit or applicant for a permit issued under this section has committed or is found guilty by the board of any of the following:

(i) Violation of any federal, state or local law or regulations relating to home medical equipment, legend devices or medical gases.

(ii) Violation of any of the provisions of this section or regulations adopted under this section.

(iii) Commission of an act or engaging in a course of conduct that constitutes a clear and present danger to the public health and safety.

(iv) Filing a claim or assisting in the filing of a claim for reimbursement for home medical equipment or home medical equipment services that were not provided or that were not authorized to be provided.

(v) Failure to comply with any lawful order of the board.

(b) Disciplinary action by the board against a business or any person holding a permit under this section shall be in accordance with Section 73-21-99.

SOURCES: Laws, 1997, ch. 515, § 1; Laws, 1999, ch. 331, § 1; reenacted without change, Laws, 2002, 3rd Ex Sess, ch. 1, § 1; reenacted and amended, Laws, 2011, ch. 546, § 19; reenacted without change, Laws, 2016, ch. 448, § 22, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Laws of 2002, 3rd Ex Sess, ch. 1 (HB 10), § 2 effective from and after September 24, 2002, provides as follows:

"SECTION 2. The issuance of any permits by the State Board of Pharmacy in accordance with the provisions of Section 73-21-108 as it existed on June 30, 2001, during the period from July 1, 2001, until the effective date of House Bill No. 10, Third Extraordinary Session of 2002, are ratified, approved and confirmed.

"Any reimbursement payments for durable medical equipment services or medical supplies made by the Division of Medicaid to holders of permits issued by the State Board of Pharmacy in accordance with the provisions of Section 73-21-108 as it existed on June 30, 2001, during the period from July 1, 2001, until the effective date of House Bill No. 10, Third Extraordinary Session of 2002, are ratified, approved and confirmed; however, this subsection does not prevent or restrict the Division of Medicaid from exercising any of the authority granted under Section 43-13-121 with respect to any of those reimbursement payments."

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Deposit into state treasury of funds received from examination, license and permit fees and monetary penalties, see § 73-21-113.

§ 73-21-109. Unlawful use of certain business names [Repealed effective July 1, 2020].

No person shall make use of the terms "drugstore," "pharmacy," "apothecary" or words of similar meaning which indicate that pharmaceutical services are performed in any sign, letterhead or advertisement unless such person is a permit holder as provided in Section 73-21-105, or such property or name was previously registered with the Mississippi State Board of Pharmacy or provided pharmaceutical services in excess of twenty (20) years. Any person violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Three Hundred Dollars ($300.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than ninety (90) days, or by both.

SOURCES: Laws, 1983, ch. 414, § 20; reenacted without change, Laws, 1991, ch. 527, § 20; reenacted without change, Laws, 1993, ch. 416, § 21; reenacted without change, Laws, 1998, ch. 511, § 22; reenacted without change, Laws, 2002, ch. 501, § 22; reenacted without change, Laws, 2006, ch. 533, § 21; reenacted and amended, Laws, 2011, ch. 546, § 20; reenacted without change, Laws, 2016, ch. 448, § 23, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Deposit into state treasury of funds received from examination, license and permit fees and monetary penalties, see § 73-21-113.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 73-21-111. Personnel regulations; registration of pharmacy technicians; annual registration fee; criminal background checks [Repealed effective July 1, 2020].

(1) The board shall make, adopt, amend and repeal from time to time such rules and regulations for the regulation of supportive personnel as may be deemed necessary by the board.

(2) Every person who acts or serves as a pharmacy technician in a pharmacy that is located in this state and permitted by the board shall obtain a registration from the board. To obtain a pharmacy technician registration the applicant must:

(a) Have submitted a written application on a form(s) prescribed by the board; and

(b) Be of good moral character; and

(c) Have paid the initial registration fee not to exceed One Hundred Dollars ($100.00).

(3) Each pharmacy technician shall renew his or her registration annually. To renew his or her registration, a technician must:

(a) Submit an application on a form prescribed by the board; and

(b) Pay a renewal fee not to exceed One Hundred Dollars ($100.00) for each annual registration period. The board may add a surcharge of not more than Five Dollars ($5.00) to the registration renewal fee to assist in funding a program that assists impaired pharmacists, pharmacy students and pharmacy technicians.

(4) To insure that all applicants are of good moral character, the board shall conduct a criminal history records check on all applicants for a license. In order to determine the applicant's suitability for licensing, the applicant shall be fingerprinted. The board shall submit the fingerprints to the Department of Public Safety for a check of the state criminal records and forwarded to the Federal Bureau of Investigation for a check of the national criminal records. The Department of Public Safety shall disseminate the results of the state check and the national check to the board for a suitability determination. The board shall be authorized to collect from the applicant the amount of the fee that the Department of Public Safety charges the board for the fingerprinting,

whether manual or electronic, and the state and national criminal history records checks.

SOURCES: Laws, 1983, ch. 414, § 21; reenacted without change, Laws, 1991, ch. 527, § 21; reenacted without change, Laws, 1993, ch. 416, § 22; reenacted without change, Laws, 1998, ch. 511, § 23; reenacted and amended, Laws, 2002, ch. 501, § 23; Laws, 2005, ch. 514, § 2; reenacted without change, Laws, 2006, ch. 533, § 22; reenacted without change, Laws, 2011, ch. 546, § 21; reenacted without change, Laws, 2016, ch. 448, § 24, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Deposit into state treasury of funds received from examination, license and permit fees and monetary penalties, see § 73-21-113.

§ 73-21-113. Payment and deposit into state treasury of funds received by state board of pharmacy; expenditure [Repealed effective July 1, 2020].

All fees received by the board from examinations, licenses, permits and monetary penalties, and any other funds received by the board, shall be paid to the State Treasurer, who shall issue receipts therefor and deposit such funds in the State Treasury in a special fund to the credit of the board. All such funds shall be expended only pursuant to appropriation approved by the Legislature and as provided by law.

SOURCES: Laws, 1983, ch. 414, § 22; Laws, 1984, ch. 488, § 277; reenacted without change, Laws, 1991, ch. 527, § 22; reenacted without change, Laws, 1993, ch. 416, § 23; reenacted without change, Laws, 1998, ch. 511, § 24; reenacted without change, Laws, 2002, ch. 501, § 24; reenacted without change, Laws, 2006, ch. 533, § 23; reenacted without change, Laws, 2011, ch. 546, § 22; reenacted without change, Laws, 2016, ch. 448, § 25, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Authority of state board of pharmacy to assess monetary penalties, see § 73-21-103.

§ 73-21-115. Prescription forms; execution; dispensing options; one-time emergency dispensing authority [Repealed effective July 1, 2020].

(1) Every prescription written in this state by a person authorized to issue such prescription shall be on prescription forms containing two (2) lines for the

prescriber's signature. There shall be a signature line in the lower right-hand corner of the prescription form beneath which shall be clearly imprinted the words "substitution permissible." There shall be a signature line in the lower left-hand corner of the prescription form beneath which shall be clearly imprinted the words "dispense as written." The prescriber's signature on either signature line shall validate the prescription and shall designate approval or disapproval of product selection.

(2) If a prescription form which does not contain the two (2) signature lines required in subsection (1) of this section is utilized by the prescriber, he shall write in his own handwriting the words "dispense as written" thereupon to prevent product selection.

(3) A pharmacist licensed by the Mississippi State Board of Pharmacy may dispense a one-time emergency dispensing of a prescription of up to a seventy-two-hour supply of a prescribed medication in the event the pharmacist is unable to contact the prescriber to obtain refill authorization, provided that:

(a) The prescription is not for a controlled substance;

(b) In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort;

(c) The dispensing pharmacist notifies the prescriber or his agent of the emergency dispensing within seven (7) working days after the one-time emergency dispensing;

(d) The pharmacist properly records the dispensing as a separate nonrefillable prescription. Said document shall be filed as is required of all other prescription records. This document shall be serially numbered and contain all information required of other prescriptions. In addition it shall contain the number of the prescription from which it was refilled; and

(e) The pharmacist shall record on the new document the circumstances which warrant this emergency dispensing.

This emergency dispensing shall be done only in the permitted facility which contains the nonrefillable prescription.

SOURCES: Laws, 1983, ch. 414, § 23; reenacted without change, Laws, 1991, ch. 527, § 23; reenacted without change, Laws, 1993, ch. 416, § 24; Laws, 1994, ch. 513, § 10; reenacted without change, Laws, 1998, ch. 511, § 25; reenacted without change, Laws, 2002, ch. 501, § 25; reenacted without change, Laws, 2006, ch. 533, § 24; reenacted without change, Laws, 2011, ch. 546, § 23; reenacted without change, Laws, 2016, ch. 448, § 26, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Substitution of generic equivalent drug products, see § 73-21-117.

Limitation of liability of prescribers and dispensing pharmacists in connection with substitution of generic equivalent drug products, see § 73-21-121.

Dispensation of drugs to state executioner, see § 99-19-53.

§ 73-21-117. Substitution of generic equivalent drug [Repealed effective July 1, 2020].

(1) A pharmacist may select a generic equivalent drug product only when such selection results in lower cost to the purchaser, unless product selection is expressly prohibited by the prescriber.

(2) A pharmacist shall select a generic equivalent drug product when:

(a) The purchaser requests the selection of a generic equivalent drug product;

(b) The prescriber has not expressly prohibited product selection; and

(c) Product selection will result in lower cost to the purchaser.

Before product selection is made, the pharmacist shall advise the purchaser of his prerogatives under this subsection.

(3) When requested by the purchaser to dispense the drug product as ordered by the prescriber, a pharmacist shall not select a generic equivalent drug product.

SOURCES: Laws, 1983, ch. 414, § 24; reenacted without change, Laws, 1991, ch. 527, § 24; reenacted without change, Laws, 1993, ch. 416, § 25 (approved March 18, 1993); reenacted without change, Laws, 1998, ch. 511, § 26; reenacted without change, Laws, 2002, ch. 501, § 26; reenacted without change, Laws, 2006, ch. 533, § 25; reenacted without change, Laws, 2011, ch. 546, § 24; reenacted without change, Laws, 2016, ch. 448, § 27, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Requirement for providing dispensing options on prescription forms, see § 73-21-115.

Limitation of liability of prescribers and dispensing pharmacists in connection with substitution of generic equivalent drug products, see § 73-21-121.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs § 85.

9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Form 31.

9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Form 31.1 (complaint, petition, or declaration — against pharmacy and pharmacist — damages resulting from alteration of prescription by pharmacist).

CJS. 28 C.J.S., Drugs and Narcotics §§ 99, 100 et seq.

§ 73-21-119. Labeling of drug products sold at retail [Repealed effective July 1, 2020].

(1) The label of the container of any drug product which is sold within the State of Mississippi for resale at retail and which requires a prescription to be dispensed at retail shall contain at a minimum the name of the manufacturer of the final dosage unit, expiration date if applicable, batch or lot number and national drug code.

(2) Whenever product selection is made, the pharmacist shall indicate on the label of the dispensed container the initials "G.E." and the proprietary name of the product dispensed or the generic name of the product dispensed and its manufacturer either written in full or appropriately abbreviated, unless the prescriber indicates that the name of the drug product shall not appear on the label.

SOURCES: Laws, 1983, ch. 414, § 25; reenacted without change, Laws, 1991, ch. 527, § 25; reenacted without change, Laws, 1993, ch. 416, § 26; Laws, 1994, ch. 513, § 11; reenacted without change, Laws, 1998, ch. 511, § 27; reenacted without change, Laws, 2002, ch. 501, § 27; reenacted without change, Laws, 2006, ch. 533, § 26; reenacted without change, Laws, 2011, ch. 546, § 25; reenacted without change, Laws, 2016, ch. 448, § 28, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Limitation of liability of prescribers and dispensing pharmacists in connection with substitution of generic equivalent drug products, see § 73-21-121.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs §§ 80, 132 et seq., 165, 243.

9 Am. Jur. Pl & Pr Forms (Rev), Drugs, Narcotics, and Poisons, Form 35.

CJS. 28 C.J.S., Drugs and Narcotics §§ 108, 109.

Practice References. Woodside, Drug Product Liability (Matthew Bender).

§ 73-21-121. Immunity from civil or criminal liability of dispensing pharmacists and prescribers; immunity from civil liability of persons providing information to board or pharmacist organization; disclosure of information in records of board or pharmacist organization [Repealed effective July 1, 2020].

(1) Product selection as authorized by Sections 73-21-115 through 73-21-119 shall not constitute evidence of negligence by the dispensing pharmacist when such product selection is in accordance with reasonable and prudent pharmacy practice. No prescriber shall be liable for civil damages or in any criminal prosecution arising from the incorrect product selection by a pharmacist.

(2) Any person having knowledge relating to a pharmacist or to a pharmacy student which might provide grounds for disciplinary action by the board may report relevant facts to the board, and shall by reason of reporting such facts in good faith be immune from civil liability.

(3) Any person furnishing information in the form of data, reports or records to the board or to a pharmacist organization approved by the board to receive such information, where such information is furnished for the purpose of aiding a pharmacist or a pharmacy student impaired by chemical abuse or

by mental or by physical illness, shall by reason of furnishing such information in good faith be immune from civil liability.

(4) The records of the board or the records of a pharmacist organization approved by the board to aid pharmacists or pharmacy students impaired by chemical abuse, where such records relate to the impairment, shall be confidential and are not considered open records; provided, however, the board may disclose this confidential information only:

(a) In a disciplinary hearing before the board, or in an appeal of an action or order of the board;

(b) To the pharmacist licensing or disciplinary authorities of other jurisdictions in the case of a pharmacist who is licensed in, or seeking transfer to, another state; or

(c) Pursuant to an order of a court of competent jurisdiction.

SOURCES: Laws, 1983, ch. 414, § 27; Laws, 1991, ch. 527, § 26; reenacted, Laws, 1993, ch. 416, § 27; reenacted without change, Laws, 1998, ch. 511, § 28; reenacted without change, Laws, 2002, ch. 501, § 28; reenacted without change, Laws, 2006, ch. 533, § 27; reenacted without change, Laws, 2011, ch. 546, § 26; reenacted without change, Laws, 2016, ch. 448, § 29, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Limitation of liability of community pharmacies, pharmacists and volunteers for actions arising out of provision of charitable or gratuitous pharmaceutical products, see § 73-21-125.

RESEARCH REFERENCES

ALR. Liability of pharmacist who accurately fills prescription for harm resulting to user. 44 A.L.R.5th 393.

Practice References. Woodside, Drug Product Liability (Matthew Bender).

§ 73-21-123. Sales of certain drugs not regulated [Repealed effective July 1, 2020].

Nothing in this chapter shall be construed to prevent, or in any manner interfere with, or to require a permit for the sale of nonnarcotic nonprescription drugs which may be lawfully sold under the United States Food, Drug and Cosmetic Act (21 USCS 301 et seq. as now or hereafter amended) without a prescription, nor shall any rule or regulation be adopted by the board under the provisions of this chapter which shall require the sale of nonprescription drugs by a licensed pharmacist of in a pharmacy or otherwise apply to or interfere with the sale or distribution of such drugs.

SOURCES: Laws, 1983, ch. 414, § 27; reenacted without change, Laws, 1991, ch. 527, § 27; reenacted without change, Laws, 1993, ch. 416, § 28; reenacted without changes, Laws, 1998, ch. 511, § 29; reenacted without change, Laws, 2002, ch. 501, § 29; reenacted without change, Laws, 2006, ch. 533,

§ 28; reenacted without change, Laws, 2011, ch. 546, § 27; reenacted without change, Laws, 2016, ch. 448, § 30, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment reenacted the section without change.

Cross References — Regulation of sale of proprietary or patent medicine which, if drunk to excess, will produce intoxication, see § 97-31-25.

Dispensation of drugs to state executioner, see § 99-19-53.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drugs §§ 1, 2, 4, 6, 18 et seq.

CJS. 28 C.J.S., Drugs and Narcotics §§ 85, 86.

Practice References. Woodside, Drug Product Liability (Matthew Bender).

§ 73-21-125. Community pharmacies and pharmacists and volunteers working therein immune from civil liability for actions arising out of provision of charitable or gratuitous pharmaceutical products [Repealed effective July 1, 2020].

(1) Any community pharmacy, including a faith-based community pharmacy, or any licensed pharmacist who voluntarily provides charitable services in a community pharmacy, or any other person who serves as a volunteer in a community pharmacy, shall be immune from liability for any civil action arising out of supplying pharmaceutical products in the course of providing such charitable or gratuitous pharmaceutical products. This section shall not extend immunity to acts of gross negligence or willful or wanton misconduct or to the manufacturer or designer of products provided.

(2) Any community pharmacy seeking immunity under this section shall post a notice, in a conspicuous place adjacent to the area where prescriptions are picked up by consumers, reading substantially as follows: "NOTICE: If you are harmed by medication that you receive here, you do not have the same legal recourse as you have against other pharmacies." Failure to post the notice negates the immunity from liability provided under this section. The notice shall be no less than eleven (11) by fourteen (14) inches in size, and the type used shall be no smaller than thirty-six (36) point and surrounded by a one-inch solid black border.

(3) For purposes of this section, "community pharmacy" means a pharmacy operated solely for charitable purposes, whose only function is to supply gratuitous pharmaceutical products, and which is operated by a nonprofit organization qualified or eligible for qualification as a tax-exempt organization under 26 USCS 501.

SOURCES: Laws, 2005, ch. 459, § 1; brought forward without change, Laws, 2016, ch. 448, § 31, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment brought the section forward without change.

Cross References — Limitation of liability of prescribers and dispensing pharmacists in connection with substitution of generic equivalent drug products, see § 73-21-121.

§ 73-21-126. Rules and regulations for issuance and renewal of licenses and permits for in and out of state wholesale distributors, chain pharmacy warehouses and re-packagers [Repealed effective July 1, 2020].

(1) The State Board of Pharmacy shall promulgate rules regarding the issuance and renewal of licenses and permits for new or renewal application requirements for both in- and out-of-state wholesale distributors, chain pharmacy warehouses and repackagers shipping into Mississippi. Requirements for new and/or renewal applications, if information has not been previously provided to the board, will include, but not be limited to, the following:

(a) Type of ownership (individual, partnership or corporation);

(b) Names of principal owners or officers and social security numbers;

(c) Names of designated representatives and social security numbers;

(d) Criminal background checks of applicants and designated representatives as required by rule;

(e) Copy of license in home state;

(f) Bond requirements.

(2) The board shall promulgate rules for the establishment of a pedigree or electronic file to be used by wholesale distributors, chain pharmacy warehouses and repackagers for the purpose of ensuring the integrity of drugs owned, purchased, distributed, returned, transferred and sold when the products leave the normal distribution channel.

(3) The board is authorized to use an outside agency to accredit wholesale distributors and repackagers, including the National Association of Boards of Pharmacy's (NABP) Verified Accredited Wholesale Distributors (VAWD) program.

(4) Pharmacies shall not be responsible for verification or adjudication of the pedigree for pharmaceuticals.

(5) The board may exempt wholesalers accredited by the VAWD program from the above requirements.

SOURCES: Laws, 2006, ch. 533, § 30; Laws, 2016, ch. 448, § 32, eff from and after July 1, 2016.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment, in (1), substituted "new and/or renewal applications" for "new and on renewal applications," and made minor stylistic changes.

§ 73-21-127. Board of Pharmacy to develop and implement computerized program to track certain prescriptions; report of suspected abuse and misuse of controlled substances; access to collected data; confidentiality; penalties for knowingly failing to submit or submitting incorrect dispensing information [Repealed effective July 1, 2020].

The Board of Pharmacy shall develop and implement a computerized program to track prescriptions for controlled substances and to report suspected abuse and misuse of controlled substances in compliance with the federal regulations promulgated under authority of the National All Schedules Prescription Electronic Reporting Act of 2005 and in compliance with the federal HIPAA law, under the following conditions:

(a) Submission or reporting of dispensing information shall be mandatory and required by the State Board of Pharmacy for any entity dispensing controlled substances in or into the State of Mississippi, except for the dispensing of controlled substance drugs by a veterinarian residing in the State of Mississippi.

(b) The prescriptions tracked shall be prescriptions for controlled substances listed in Schedule II, III, IV or V and specified noncontrolled substances identified by the State Board of Pharmacy that are dispensed to residents in the State of Mississippi by licensed pharmacies, nonresident pharmacies, institutions and dispensing practitioners, regardless of dispenser location.

(c) The Board of Pharmacy shall report any activity it reasonably suspects may be fraudulent or illegal to the appropriate law enforcement agency or occupational licensing board and provide them with the relevant information obtained for further investigation.

(d) The program shall provide information regarding the potential inappropriate use of controlled substances and the specified noncontrolled substances to practitioners, pharmacists-in-charge and appropriate state agencies in order to prevent the inappropriate or illegal use of these controlled substances. The specific purposes of the program shall be to: be proactive in safeguarding public health and safety; support the legitimate use of controlled substances; facilitate and encourage the identification, intervention with and treatment of individuals addicted to controlled substances and specified noncontrolled drugs; identify and prevent drug diversion; provide assistance to those state and federal law enforcement and regulatory agencies investigating cases of drug diversion or other misuse; and inform the public and health care professionals of the use and abuse trends related to controlled substance and specified noncontrolled drugs.

(e)(i) Access to collected data shall be confidential and not subject to the provisions of the federal Freedom of Information Act or the Mississippi Public Records Act. Upon request, the State Board of Pharmacy shall provide collected information to: pharmacists or practitioners who are properly registered with the State Board of Pharmacy and are authorized to prescribe or dispense controlled substances for the purpose of providing medical and pharmaceutical care for their patients; local, state and federal law enforcement officials engaged in the administration, investigation or enforcement of the laws governing illicit drug use; regulatory and licensing boards in this state; Division of Medicaid regarding Medicaid and Medicare Program recipients; judicial authorities under grand jury subpoena; an individual who requests the individual's own prescription monitoring information; and prescription monitoring programs in other states through mutual agreement adhering to State Board of Pharmacy policies.

(ii) The Director of the Mississippi Bureau of Narcotics, or his designee, shall have access to the Prescription Monitoring Program (PMP) database for the purpose of investigating the potential illegal acquisition, distribution, dispensing, prescribing or administering of the controlled and noncontrolled substances monitored by the program, subject to all legal restrictions on further dissemination of the information obtained.

(iii) The State Board of Pharmacy may also provide statistical data for research or educational purposes if the board determines the use of the data to be of significant benefit to public health and safety. The board maintains the right to refuse any request for PMP data.

(iv) A pharmacist licensed by the Mississippi Board of Pharmacy must be a registered user of the PMP. Failure of a pharmacist licensed by the Mississippi Board of Pharmacy to register as a user of the PMP is grounds for disciplinary action by the board.

(v) All licensed practitioners as defined under Section 73-21-73(cc) holding an active DEA number shall register as users of the PMP.

(f) The Prescription Monitoring Program through the Board of Pharmacy may:

(i) Establish the cost of administration, maintenance, and operation of the program and charge to like agencies a fee based on a formula to be determined by the board with collaboration and input from participating agencies; and

(ii) Assess charges for information and/or statistical data provided to agencies, institutions and individuals. The amounts of those fees shall be set by the Executive Director of the Board of Pharmacy based on the recommendation of the Director of the PMP.

All such fees collected shall be deposited into the special fund of the State Board of Pharmacy and used to support the operations of the PMP.

(g) A dispenser pharmacist or practitioner licensed to dispense controlled substances and specified noncontrolled substance drugs who knowingly fails to submit drug monitoring information or knowingly submits incorrect dispensing information shall be subject to actions against the pharmacist's or practitioner's license, registrations or permit and/or an administrative penalty as provided in Sections 73-21-97 and 73-21-103. Any misuse of the PMP is subject to penalties as provided in Sections 73-21-97 and 73-21-103.

(h) The Board of Pharmacy and the Prescription Monitoring Program shall be immune from civil liability arising from inaccuracy of any of the information submitted to the program.

(i) "Practitioner," as used in this section, shall include any person licensed, registered or otherwise permitted to distribute, dispense, prescribe or administer a controlled substance, as defined under Section 41-29-105(y), and any person defined as a "practitioner" under Section 73-21-73(cc).

(j) In addition to any funds appropriated by the Legislature, the State Board of Pharmacy may apply for any available grants and accept any gifts, grants or donations to assist in future development or in maintaining the program.

SOURCES: Laws, 2006, ch. 533, § 29; Laws, 2008, ch. 516, § 1; Laws, 2011, ch. 533, § 1; Laws, 2011, ch. 546, § 35; Laws, 2014, ch. 324, § 1; Laws, 2016, ch. 448, § 33; Laws, 2017, ch. 334, § 1, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 1 of ch. 533, Laws of 2011, effective from and after passage (approved April 26, 2011), amended this section. Section 35 of ch. 546, Laws of 2011, effective from and after passage (approved April 26, 2011), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Legislative Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 13, 2011, meeting of the Committee.

Editor's Note — Laws of 2006, ch. 533, § 29, provided for this section to be codified as § 73-21-125, a Code section number that is already in use. This section has been codified as § 73-21-127 at the direction of Co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment, in (a), added "Submission or" at the beginning and made a related change, and deleted "prescribed" preceding "by a veterinarian"; in (b), deleted "Drug Enforcement Agency" preceding "Schedule II" and substituted "identified by the State" for "authorized by the State"; rewrote (e)(iii), which read: "The State Board of Pharmacy may also provide generic, nonidentifying statistical data for research or educational purposes"; added (f) and (h) and redesignated former (f) as (g) and former (g) and (h) as (i) and (j); added the last sentence in (g); and deleted former (i), which read: "This section shall stand repealed on July 1, 2016."

The 2017 amendment, in (e), substituted "Mississippi Public Records Act" for "Mississippi Open Records Act" in (i), and added (v); and added "and any person defined as a 'practitioner' under Section 73-21-73(cc)" at the end of (i).

Cross References — Willful failure to submit drug monitoring information or willful submission of incorrect dispensing information as grounds for disciplinary action against a licensee, see § 73-21-97.

Monetary penalty for knowingly failing to submit drug monitoring information or knowingly submitting incorrect dispensing information, see § 73-21-103.

Federal Aspects — National All Schedules Prescription Electronic Reporting Act of 2005, see 42 USCS § 280g-3.

HIPAA (Health Insurance Portability and Accountability Act) generally, see 42 USCS §§ 1320d et seq.

§ 73-21-129. Certain drug manufacturers required to make provision for return of outdated drugs from pharmacies; investigation and discipline of noncompliant manufacturers; exemption; definitions [Repealed effective July 1, 2020].

(1) Each manufacturer whose products are distributed within the State of Mississippi shall make adequate provision for the return of outdated drugs from pharmacies, both full and partial containers, excluding biological, infused or intravenously injected drugs and drugs that are inhaled during surgery, within six (6) months after the labeled expiration date, for prompt full credit or refund.

(2) Wholesale distributors and reverse distributors that are required to register with the board and have a permit under Section 73-21-105 shall implement and administer the return policies established by the manufacturer.

(3) If the board receives information that a manufacturer has failed to comply with this section, the board shall investigate the matter and present any evidence of the manufacturer's failure to comply to a review committee composed of the Dean of the University of Mississippi School of Pharmacy, the Executive Director of the State Board of Pharmacy and the Director of the Pharmacy Bureau of the Division of Medicaid, or the designee of any of those officials. The committee shall review the evidence of the manufacturer's failure to comply with this section and make a recommendation to the board regarding the discipline of the manufacturer for its failure to comply. After the board has received the recommendation of the committee, the board may discipline the manufacturer by providing that the manufacturer's products shall be ineligible for use in product selection in any state drug assistance programs.

(4) A pharmacist may not dispense a prescription drug or controlled drug unless the pharmacist has satisfactory evidence that the manufacturer of the drug has a procedure for the return of expired drugs.

(5) Any manufacturer that had a repurchase program in place on January 1, 2008, shall be exempt from the provisions of this section, provided that the repurchase program makes provision for the repurchase of outdated drugs in either full or partial amounts within six (6) months after the labeled expiration date.

(6) As used in this section, the term "biological drug" or "biological product" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product or analogous product, or arsphenamine or derivative of arsphenamine or any other trivalent organic arsenic compound, applicable to the prevention, treatment or cure of a disease or condition of human beings.

SOURCES: Laws, 2008, ch. 512, § 1; Laws, 2011, ch. 546, § 28; Laws, 2016, ch. 448, § 34, eff from and after July 1, 2016.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The subsection designation "(8)" was changed to "(7)". The Joint Committee ratified the correction at its August 5, 2008, meeting.

Editor's Note — For the repeal date of this section, see § 73-21-69.

Amendment Notes — The 2016 amendment deleted former (7), which read: "This section shall stand repealed on July 1, 2016."

PHARMACY BENEFIT PROMPT PAY ACT

Sec.	
73-21-151.	Short title.
73-21-153.	Definitions.
73-21-155.	Most current nationally recognized reference price to be used in calculation of reimbursement for prescription drugs and other products and supplies; updating of reference price; time period for payment of benefits; "clean claim" defined; compliance; penalties.
73-21-157.	License required to do business as pharmacy benefit manager; pharmacy benefit managers to file certain financial statements with State Board of Pharmacy; time period for filing statements.
73-21-159.	Financial examination of pharmacy benefit manager.

§ 73-21-151. Short title.

Sections 73-21-151 through 73-21-159 shall be known as the "Pharmacy Benefit Prompt Pay Act."

SOURCES: Laws, 2006, ch. 533, § 31, eff from and after June 30, 2006.

§ 73-21-153. Definitions.

For purposes of Sections 73-21-151 through 73-21-159, the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Board" means the State Board of Pharmacy.

(b) "Commissioner" means the Mississippi Commissioner of Insurance.

(c) "Day" means a calendar day, unless otherwise defined or limited.

(d) "Electronic claim" means the transmission of data for purposes of payment of covered prescription drugs, other products and supplies, and pharmacist services in an electronic data format specified by a pharmacy benefit manager and approved by the department.

(e) "Electronic adjudication" means the process of electronically receiving, reviewing and accepting or rejecting an electronic claim.

(f) "Enrollee" means an individual who has been enrolled in a pharmacy benefit management plan.

(g) "Health insurance plan" means benefits consisting of prescription drugs, other products and supplies, and pharmacist services provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as prescription drugs, other products and supplies, and pharmacist services under any hospital or medical service policy or certificate, hospital or medical service plan contract, preferred provider organization agreement, or health maintenance organization contract offered by a health insurance issuer, unless preempted as an employee benefit plan under the Employee Retirement Income Security Act of 1974. However, "health insurance coverage" shall not include benefits due under the workers compensation laws of this or any other state.

(h) "Pharmacy benefit manager" shall have the same definition as provided in Section 73-21-179. However, through June 30, 2014, the term "pharmacy benefit manager" shall not include an insurance company that provides an integrated health benefit plan and that does not separately contract for pharmacy benefit management services. From and after July 1, 2014, the term "pharmacy benefit manager" shall not include an insurance company unless the insurance company is providing services as a pharmacy benefit manager as defined in Section 73-21-179, in which case the insurance company shall be subject to Sections 73-21-151 through 73-21-159 only for those pharmacy benefit manager services. In addition, the term "pharmacy benefit manager" shall not include the pharmacy benefit manager of the Mississippi State and School Employees Health Insurance Plan or the Mississippi Division of Medicaid or its contractors when performing pharmacy benefit manager services for the Division of Medicaid.

(i) "Pharmacy benefit management plan" shall have the same definition as provided in Section 73-21-179.

(j) "Pharmacist," "pharmacist services" and "pharmacy" or "pharmacies" shall have the same definitions as provided in Section 73-21-73.

(k) "Uniform claim form" means a form prescribed by rule by the State Board of Pharmacy; however, for purposes of Sections 73-21-151 through 73-21-159, the board shall adopt the same definition or rule where the State Department of Insurance has adopted a rule covering the same type of claim. The board may modify the terminology of the rule and form when necessary to comply with the provisions of Sections 73-21-151 through 73-21-159.

(*l*) "Plan sponsors" means the employers, insurance companies, unions and health maintenance organizations that contract with a pharmacy benefit manager for delivery of prescription services.

SOURCES: Laws, 2006, ch. 533, § 32; Laws, 2013, ch. 541, § 3, eff from and after July 1, 2013.

Cross References — State Employee Life and Health Insurance Plan, see generally §§ 25-13-3 et seq.

Federal Aspects — Employee Retirement Income Security Act of 1974, see generally 29 USCS §§ 1001 et seq.

§ 73-21-155. Most current nationally recognized reference price to be used in calculation of reimbursement for prescription drugs and other products and supplies; updating of reference price; time period for payment of benefits; "clean claim" defined; compliance; penalties.

(1) Reimbursement under a contract to a pharmacist or pharmacy for prescription drugs and other products and supplies that is calculated according to a formula that uses a nationally recognized reference in the pricing calculation shall use the most current nationally recognized reference price or amount in the actual or constructive possession of the pharmacy benefit manager, its agent, or any other party responsible for reimbursement for prescription drugs and other products and supplies on the date of electronic adjudication or on the date of service shown on the nonelectronic claim.

(2) Pharmacy benefit managers, their agents and other parties responsible for reimbursement for prescription drugs and other products and supplies shall be required to update the nationally recognized reference prices or amounts used for calculation of reimbursement for prescription drugs and other products and supplies no less than every three (3) business days.

(3)(a) All benefits payable under a pharmacy benefit management plan shall be paid within fifteen (15) days after receipt of due written proof of a clean claim where claims are submitted electronically, and shall be paid within thirty-five (35) days after receipt of due written proof of a clean claim where claims are submitted in paper format. Benefits due under the plan and claims are overdue if not paid within fifteen (15) days or thirty-five (35) days, whichever is applicable, after the pharmacy benefit manager receives a clean claim containing necessary information essential for the pharmacy benefit manager to administer preexisting condition, coordination of benefits and subrogation provisions under the plan sponsor's health insurance plan. A "clean claim" means a claim received by any pharmacy benefit manager for adjudication and which requires no further information, adjustment or alteration by the pharmacist or pharmacies or the insured in order to be processed and paid by the pharmacy benefit manager. A claim is clean if it has no defect or impropriety, including any lack of substantiating documentation, or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this subsection. A clean claim includes resubmitted claims with previously identified deficiencies corrected.

(b) A clean claim does not include any of the following:

(i) A duplicate claim, which means an original claim and its duplicate when the duplicate is filed within thirty (30) days of the original claim;

(ii) Claims which are submitted fraudulently or that are based upon material misrepresentations;

(iii) Claims that require information essential for the pharmacy benefit manager to administer preexisting condition, coordination of benefits or subrogation provisions under the plan sponsor's health insurance plan; or

(iv) Claims submitted by a pharmacist or pharmacy more than thirty (30) days after the date of service; if the pharmacist or pharmacy does not submit the claim on behalf of the insured, then a claim is not clean when submitted more than thirty (30) days after the date of billing by the pharmacist or pharmacy to the insured.

(c) Not later than fifteen (15) days after the date the pharmacy benefit manager actually receives an electronic claim, the pharmacy benefit manager shall pay the appropriate benefit in full, or any portion of the claim that is clean, and notify the pharmacist or pharmacy (where the claim is owed to the pharmacist or pharmacy) of the reasons why the claim or portion thereof is not clean and will not be paid and what substantiating documentation and information is required to adjudicate the claim as clean. Not later than thirty-five (35) days after the date the pharmacy benefit manager actually receives a paper claim, the pharmacy benefit manager shall pay the appropriate benefit in full, or any portion of the claim that is clean, and notify the pharmacist or pharmacy (where the claim is owed to the pharmacist or pharmacy) of the reasons why the claim or portion thereof is not clean and will not be paid and what substantiating documentation and information is required to adjudicate the claim as clean. Any claim or portion thereof resubmitted with the supporting documentation and information requested by the pharmacy benefit manager shall be paid within twenty (20) days after receipt.

(4) If the board finds that any pharmacy benefit manager, agent or other party responsible for reimbursement for prescription drugs and other products and supplies has not paid ninety-five percent (95%) of clean claims as defined in subsection (3) of this section received from all pharmacies in a calendar quarter, he shall be subject to administrative penalty of not more than Twenty-five Thousand Dollars ($25,000.00) to be assessed by the State Board of Pharmacy.

(a) Examinations to determine compliance with this subsection may be conducted by the board. The board may contract with qualified impartial outside sources to assist in examinations to determine compliance. The expenses of any such examinations shall be paid by the pharmacy benefit manager examined.

(b) Nothing in the provisions of this section shall require a pharmacy benefit manager to pay claims that are not covered under the terms of a contract or policy of accident and sickness insurance or prepaid coverage.

(c) If the claim is not denied for valid and proper reasons by the end of the applicable time period prescribed in this provision, the pharmacy benefit manager must pay the pharmacy (where the claim is owed to the pharmacy) or the patient (where the claim is owed to a patient) interest on accrued benefits at the rate of one and one-half percent (1-½%) per month accruing from the day after payment was due on the amount of the benefits that remain unpaid until the claim is finally settled or adjudicated. Whenever interest due pursuant to this provision is less than One Dollar ($1.00), such amount shall be credited to the account of the person or entity to whom such amount is owed.

(d) Any pharmacy benefit manager and a pharmacy may enter into an express written agreement containing timely claim payment provisions which differ from, but are at least as stringent as, the provisions set forth under subsection (3) of this section, and in such case, the provisions of the written agreement shall govern the timely payment of claims by the pharmacy benefit manager to the pharmacy. If the express written agreement is silent as to any interest penalty where claims are not paid in accordance with the agreement, the interest penalty provision of subsection (4)(c) of this section shall apply.

(e) The State Board of Pharmacy may adopt rules and regulations necessary to ensure compliance with this subsection.

(5)(a) For purposes of this subsection (5), "network pharmacy" means a licensed pharmacy in this state that has a contract with a pharmacy benefit manager to provide covered drugs at a negotiated reimbursement rate. A network pharmacy or pharmacist may decline to provide a brand name drug, multisource generic drug, or service, if the network pharmacy or pharmacist is paid less than that network pharmacy's acquisition cost for the product. If the network pharmacy or pharmacist declines to provide such drug or service, the pharmacy or pharmacist shall provide the customer with adequate information as to where the prescription for the drug or service may be filled.

(b) The State Board of Pharmacy shall adopt rules and regulations necessary to implement and ensure compliance with this subsection, including, but not limited to, rules and regulations that address access to pharmacy services in rural or underserved areas in cases where a network pharmacy or pharmacist declines to provide a drug or service under paragraph (a) of this subsection. The board shall promulgate the rules and regulations required by this paragraph (b) not later than October 1, 2016.

SOURCES: Laws, 2006, ch. 533, § 33; Laws, 2016, ch. 453, § 1, eff from and after July 1, 2016.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a section reference in the last sentence of (4)(d). The reference to "subsection (4)(d)" was changed to "subsection (4)(c)". The Joint Committee ratified the correction at its August 5, 2008, meeting.

Amendment Notes — The 2016 amendment added (5).

§ 73-21-157. License required to do business as pharmacy benefit manager; pharmacy benefit managers to file certain financial statements with State Board of Pharmacy; time period for filing statements.

(1) Before beginning to do business as a pharmacy benefit manager, a pharmacy benefit manager shall obtain a license to do business from the board. To obtain a license, the applicant shall submit an application to the board on a form to be prescribed by the board.

(2) Each pharmacy benefit manager providing pharmacy management benefit plans in this state shall file a statement with the board annually by March 1 or within sixty (60) days of the end of its fiscal year if not a calendar year. The statement shall be verified by at least two (2) principal officers and shall cover the preceding calendar year or the immediately preceding fiscal year of the pharmacy benefit manager.

(3) The statement shall be on forms prescribed by the board and shall include:

(a) A financial statement of the organization, including its balance sheet and income statement for the preceding year; and

(b) Any other information relating to the operations of the pharmacy benefit manager required by the board under this section.

However, no pharmacy benefit manager shall be required to disclose proprietary information of any kind to the board.

(4) If the pharmacy benefit manager is audited annually by an independent certified public accountant, a copy of the certified audit report shall be filed annually with the board by June 30 or within thirty (30) days of the report being final.

(5) The board may extend the time prescribed for any pharmacy benefit manager for filing annual statements or other reports or exhibits of any kind for good cause shown. However, the board shall not extend the time for filing annual statements beyond sixty (60) days after the time prescribed by subsection (1) of this section. The board may waive the requirements for filing financial information for the pharmacy benefit manager if an affiliate of the pharmacy benefit manager is already required to file such information under current law with the Commissioner of Insurance and allow the pharmacy benefit manager to file a copy of documents containing such information with the board in lieu of the statement required by this section.

(6) The expense of administering this section shall be assessed annually by the board against all pharmacy benefit managers operating in this state.

SOURCES: Laws, 2006, ch. 533, § 34; Laws, 2011, ch. 546, § 31; Laws, 2013, ch. 541, § 4; Laws, 2016, ch. 453, § 2, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment deleted (7), which was the repealer for the section effective July 1, 2016.

§ 73-21-159. Financial examination of pharmacy benefit manager.

(1) In lieu of or in addition to making its own financial examination of a pharmacy benefit manager, the board may accept the report of a financial examination of other persons responsible for the pharmacy benefit manager under the laws of another state certified by the applicable official of such other state.

(2) The board shall coordinate financial examinations of a pharmacy benefit manager that provides pharmacy management benefit plans in this

state to ensure an appropriate level of regulatory oversight and to avoid any undue duplication of effort or regulation. The pharmacy benefit manager being examined shall pay the cost of the examination. The cost of the examination shall be deposited in a special fund that shall provide all expenses for the licensing, supervision and examination of all pharmacy benefit managers subject to regulation under Sections 73-21-71 through 73-21-129 and Sections 73-21-151 through 73-21-159.

(3) The board may provide a copy of the financial examination to the person or entity who provides or operates the health insurance plan or to a pharmacist or pharmacy.

(4) The board is authorized to hire independent financial consultants to conduct financial examinations of a pharmacy benefit manager and to expend funds collected under this section to pay the costs of such examinations.

SOURCES: Laws, 2006, ch. 533, § 35; Laws, 2011, ch. 546, § 32; Laws, 2013, ch. 541, § 5; Laws, 2016, ch. 453, § 3, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment deleted (5), which was the repealer for the section effective July 1, 2016.

PHARMACY AUDIT INTEGRITY ACT

SEC.
73-21-175. Short title.
73-21-177. Purpose.
73-21-179. Definitions.
73-21-181. Application.
73-21-183. Audit procedures; written report; report requirements.
73-21-185. Appeals; dismissal of audit report; mediation of unresolved issues.
73-21-187. Use of extrapolation in calculating recoupments or penalties prohibited.
73-21-189. Limitation of applicability of Sections 73-21-175 through 73-21-189.
73-21-191. Penalty for noncompliance with Sections 73-21-175 through 73-21-189.

§ 73-21-175. Short title.

Sections 73-21-175 through 73-21-189 shall be known as "The Pharmacy Audit Integrity Act."

SOURCES: Laws, 2008, ch. 431, § 1, eff from and after July 1, 2008.

§ 73-21-177. Purpose.

The purpose of Sections 73-21-175 through 73-21-189 is to establish minimum and uniform standards and criteria for the audit of pharmacy records by or on behalf of certain entities.

SOURCES: Laws, 2008, ch. 431, § 2, eff from and after July 1, 2008.

§ 73-21-179. Definitions.

For purposes of Sections 73-21-175 through 73-21-189:

(a) "Entity" means a pharmacy benefit manager, a managed care company, a health plan sponsor, an insurance company, a third-party payor, or any company, group or agent that represents or is engaged by those entities.

(b) "Health insurance plan" means benefits consisting of prescription drugs, other products and supplies, and pharmacist services provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as prescription drugs, other products and supplies, and pharmacist services under any hospital or medical service policy or certificate, hospital or medical service plan contract, preferred provider organization agreement, or health maintenance organization contract offered by a health insurance issuer.

(c) "Individual prescription" means the original prescription for a drug signed by the prescriber, and excludes refills referenced on the prescription.

(d) "Pharmacy benefit manager" means a business that administers the prescription drug/device portion of pharmacy benefit management plans or health insurance plans on behalf of plan sponsors, insurance companies, unions and health maintenance organizations. Pharmacy benefit managers may also provide some, all, but may not be limited to, the following services either directly or through outsourcing or contracts with other entities:

(i) Adjudicate drug claims or any portion of the transaction.

(ii) Contract with retail and mail pharmacy networks.

(iii) Establish payment levels for pharmacies.

(iv) Develop formulary or drug list of covered therapies.

(v) Provide benefit design consultation.

(vi) Manage cost and utilization trends.

(vii) Contract for manufacturer rebates.

(viii) Provide fee-based clinical services to improve member care.

(ix) Third-party administration.

(e) "Pharmacy benefit management plan" means an arrangement for the delivery of pharmacist's services in which a pharmacy benefit manager undertakes to administer the payment or reimbursement of any of the costs of pharmacist's services for an enrollee on a prepaid or insured basis that (i) contains one or more incentive arrangements intended to influence the cost or level of pharmacist's services between the plan sponsor and one or more pharmacies with respect to the delivery of pharmacist's services; and (ii) requires or creates benefit payment differential incentives for enrollees to use under contract with the pharmacy benefit manager.

(f) "Pharmacist," "pharmacist services" and "pharmacy" or "pharmacies" shall have the same definitions as provided in Section 73-21-73.

SOURCES: Laws, 2008, ch. 431, § 3; Laws, 2012, ch. 479, § 1, eff from and after July 1, 2012.

Cross References — State and School Employees Life and Health Insurance Plan, see §§ 25-15-3 et seq.

Federal Aspects — Employee Retirement Income Security Act of 1974, see generally 29 USCS §§ 1001 et seq.

§ 73-21-181. Application.

Sections 73-21-175 through 73-21-189 shall apply to any audit of the records of a pharmacy conducted by a managed care company, nonprofit hospital or medical service organization, insurance company, third-party payor, pharmacy benefit manager, a health program administered by a department of the state or any entity that represents those companies, groups, or department.

SOURCES: Laws, 2008, ch. 431, § 4, eff from and after July 1, 2008.

§ 73-21-183. Audit procedures; written report; report requirements.

(1) The entity conducting an audit shall follow these procedures:

(a) The pharmacy contract must identify and describe in detail the audit procedures;

(b) The entity conducting the on-site audit must give the pharmacy written notice at least two (2) weeks before conducting the initial on-site audit for each audit cycle, and the pharmacy shall have at least fourteen (14) days to respond to any desk audit requirements;

(c) The entity conducting the on-site or desk audit shall not interfere with the delivery of pharmacist services to a patient and shall utilize every effort to minimize inconvenience and disruption to pharmacy operations during the audit process;

(d) Any audit that involves clinical or professional judgment must be conducted by or in consultation with a pharmacist;

(e) Any clerical or record-keeping error, such as a typographical error, scrivener's error, or computer error, regarding a required document or record shall not constitute fraud; however, those claims may be subject to recoupment. No such claim shall be subject to criminal penalties without proof of intent to commit fraud;

(f) A pharmacy may use the records of a hospital, physician, or other authorized practitioner of the healing arts for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug;

(g) A finding of an overpayment or an underpayment may be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs, except that recoupment shall be based on the actual overpayment or underpayment;

(h) A finding of an overpayment shall not include the dispensing fee amount unless a prescription was not dispensed;

(i) Each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the entity;

(j) The period covered by an audit may not exceed two (2) years from the date the claim was submitted to or adjudicated by a managed care company, nonprofit hospital or medical service organization, insurance company, third-party payor, pharmacy benefit manager, a health program administered by a department of the state or any entity that represents those companies, groups, or department;

(k) An audit may not be initiated or scheduled during the first five (5) calendar days of any month due to the high volume of prescriptions filled in the pharmacy during that time unless otherwise consented to by the pharmacy;

(*l*) Any prescription that complies with state law and rule requirements may be used to validate claims in connection with prescriptions, refills or changes in prescriptions;

(m) An exit interview that provides a pharmacy with an opportunity to respond to questions and comment on and clarify findings must be conducted at the end of an audit. The time of the interview must be agreed to by the pharmacy;

(n) Unless superseded by state or federal law, auditors shall only have access to previous audit reports on a particular pharmacy conducted by the auditing entity for the same pharmacy benefits manager, health plan or insurer. An auditing vendor contracting with multiple pharmacy benefits managers or health insurance plans shall not use audit reports or other information gained from an audit on a particular pharmacy to conduct another audit for a different pharmacy benefits manager or health insurance plan;

(o) The parameters of an audit must comply with consumer-oriented parameters based on manufacturer listings or recommendations for the following:

(i) The day supply for eyedrops must be calculated so that the consumer pays only one (1) thirty-day copayment if the bottle of eyedrops is intended by the manufacturer to be a thirty-day supply;

(ii) The day supply for insulin must be calculated so that the highest dose prescribed is used to determine the day supply and consumer copayment;

(iii) The day supply for a topical product must be determined by the judgment of the pharmacist based upon the treated area;

(p)(i) Where an audit is for a specifically identified problem that has been disclosed to the pharmacy, the audit shall be limited to claims that are identified by prescription number;

(ii) For an audit other than described in subparagraph (i) of this paragraph (p), an audit shall be limited to one hundred (100) individual prescriptions that have been randomly selected;

(iii) If an audit reveals the necessity for a review of additional claims, the audit shall be conducted on site;

(iv) Except for audits initiated under paragraph (i) of this subsection, an entity shall not initiate an audit of a pharmacy more than one (1) time in any quarter;

(r) A recoupment shall not be based on:

(i) Documentation requirements in addition to or exceeding requirements for creating or maintaining documentation prescribed by the State Board of Pharmacy; or

(ii) A requirement that a pharmacy or pharmacist perform a professional duty in addition to or exceeding professional duties prescribed by the State Board of Pharmacy;

(s) Except for Medicare claims, approval of drug, prescriber or patient eligibility upon adjudication of a claim shall not be reversed unless the pharmacy or pharmacist obtained the adjudication by fraud or misrepresentation of claim elements; and

(t) A commission or other payment to an agent or employee of the entity conducting the audit is not based, directly or indirectly, on amounts recouped.

(2) The entity must provide the pharmacy with a written report of the audit and comply with the following requirements:

(a) The preliminary audit report must be delivered to the pharmacy within one hundred twenty (120) days after conclusion of the audit, with a reasonable extension to be granted upon request;

(b) A pharmacy shall be allowed at least thirty (30) days following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during the audit, with a reasonable extension to be granted upon request;

(c) A final audit report shall be delivered to the pharmacy within one hundred eighty (180) days after receipt of the preliminary audit report or final appeal, as provided for in Section 73-21-185, whichever is later;

(d) The audit report must be signed by the auditor;

(e) Recoupments of any disputed funds, or repayment of funds to the entity by the pharmacy if permitted pursuant to contractual agreement, shall occur after final internal disposition of the audit, including the appeals process as set forth in Section 73-21-185. If the identified discrepancy for an individual audit exceeds Twenty-five Thousand Dollars ($25,000.00), future payments in excess of that amount to the pharmacy may be withheld pending finalization of the audit;

(f) Interest shall not accrue during the audit period; and

(g) Each entity conducting an audit shall provide a copy of the final audit report, after completion of any review process, to the plan sponsor.

SOURCES: Laws, 2008, ch. 431, § 5; Laws, 2012, ch. 479, § 2, eff from and after July 1, 2012.

§ 73-21-185. Appeals; dismissal of audit report; mediation of unresolved issues.

(1) Each entity conducting an audit shall establish a written appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the entity.

(2) If, following the appeal, the entity finds that an unfavorable audit report or any portion thereof is unsubstantiated, the entity shall dismiss the audit report or that portion without the necessity of any further action.

(3) If, following the appeal, any of the issues raised in the appeal are not resolved to the satisfaction of either party, that party may ask for mediation of those unresolved issues. A certified mediator shall be chosen by agreement of the parties from the Court Annexed Mediators List maintained by the Mississippi Supreme Court.

SOURCES: Laws, 2008, ch. 431, § 6, eff from and after July 1, 2008.

§ 73-21-187. Use of extrapolation in calculating recoupments or penalties prohibited.

Notwithstanding any other provision in Sections 73-21-175 through 73-21-189, the entity conducting the audit shall not use the accounting practice of extrapolation in calculating recoupments or penalties for audits. An extrapolation audit means an audit of a sample of prescription drug benefit claims submitted by a pharmacy to the entity conducting the audit that is then used to estimate audit results for a larger batch or group of claims not reviewed by the auditor.

SOURCES: Laws, 2008, ch. 431, § 7, eff from and after July 1, 2008.

§ 73-21-189. Limitation of applicability of Sections 73-21-175 through 73-21-189.

Sections 73-21-175 through 73-21-189 do not apply to any audit, review or investigation that involves alleged fraud, willful misrepresentation or abuse.

SOURCES: Laws, 2008, ch. 431, § 8, eff from and after July 1, 2008.

§ 73-21-191. Penalty for noncompliance with Sections 73-21-175 through 73-21-189.

(1) The State Board of Pharmacy may impose a monetary penalty on pharmacy benefit managers for noncompliance with the provisions of the Pharmacy Audit Integrity Act, Sections 73-21-175 through 73-21-189, in amounts of not less than One Thousand Dollars ($1,000.00) per violation and not more than Twenty-five Thousand Dollars ($25,000.00) per violation. The board shall prepare a record entered upon its minutes which states the basic

facts upon which the monetary penalty was imposed. Any penalty collected under this subsection (1) shall be deposited into the special fund of the board.

(2) The board may assess a monetary penalty for those reasonable costs that are expended by the board in the investigation and conduct of a proceeding if the board imposes a monetary penalty under subsection (1) of this section. A monetary penalty assessed and levied under this section shall be paid to the board by the licensee, registrant or permit holder upon the expiration of the period allowed for appeal of those penalties under Section 73-21-101, or may be paid sooner if the licensee, registrant or permit holder elects. Money collected by the board under this subsection (2) shall be deposited to the credit of the special fund of the board.

(3) When payment of a monetary penalty assessed and levied by the board against a licensee, registrant or permit holder in accordance with this section is not paid by the licensee, registrant or permit holder when due under this section, the board shall have the power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county and judicial district of residence of the licensee, registrant or permit holder, or if the licensee, registrant or permit holder is a nonresident of the State of Mississippi, in the Chancery Court of the First Judicial District of Hinds County, Mississippi. When those proceedings are instituted, the board shall certify the record of its proceedings, together with all documents and evidence, to the chancery court and the matter shall be heard in due course by the court, which shall review the record and make its determination thereon in accordance with the provisions of Section 73-21-101. The hearing on the matter may, in the discretion of the chancellor, be tried in vacation.

(4) The board shall develop and implement a uniform penalty policy that sets the minimum and maximum penalty for any given violation of board regulations and laws governing the practice of pharmacy. The board shall adhere to its uniform penalty policy except in those cases where the board specifically finds, by majority vote, that a penalty in excess of, or less than, the uniform penalty is appropriate. That vote shall be reflected in the minutes of the board and shall not be imposed unless it appears as having been adopted by the board.

SOURCES: Laws, 2012, ch. 479, § 3, eff from and after July 1, 2012.

CHAPTER 22

Orthotics and Prosthetics

Sec.
73-22-1. Definitions.
73-22-3. Certification to practice orthotics or prosthetics; soliciting patronage; penalties and fines for violations.

§ 73-22-1. Definitions.

As used in this chapter:

(a) "Appropriately trained" means the satisfactory completion of a course of study that covers fitting and patient management of therapeutic diabetic shoes and inserts that is approved by the National Commission for Orthotic and Prosthetic Education (N.C.O.P.E.), or a course of study offered by a manufacturer.

(b) "Orthotic device" means a brace or support, but does not include fabric and elastic supports, corsets, arch supports, trusses, elastic hose, canes, crutches, cervical collars, dental appliances or other similar devices carried in stock and sold by drug stores, department stores, corset shops or surgical supply facilities.

(c) "Orthotics" means the science or practice of measuring, designing, constructing, assembling, fitting, adjusting or servicing orthotic devices for the support, correction or alleviation of musculoskeletal diseases, injuries, disabilities or deformities as permitted by prescriptions from a licensed doctor of medicine.

(d) "Orthotist" means a person who is certified by the American Board for Certification in Orthotics and Prosthetics or the Board for Orthotist/Prosthetist Certification as a certified orthotist.

(e) "Person" means any individual, corporation, partnership, association or other organization.

(f) "Prosthetic device" means any artificial device that is not surgically implanted and that is used to replace a missing limb, appendage or any other external human body part, including devices such as artificial limbs, hands, fingers, feet, toes, but excluding artificial eyes or appliances for the eyes, dental plates, and largely cosmetic devices such as wigs, artificial breasts, eyelashes, ears and noses or other devices which could not by their use have a significantly detrimental impact upon the musculoskeletal functions of the body.

(g) "Prosthetics" means the science or practice of measuring, designing, constructing, assembling, fitting, adjusting or servicing prosthetic devices as permitted by prescriptions from a licensed doctor of medicine.

(h) "Prosthetist" means a person who is certified by the American Board for Certification in Orthotics and Prosthetics or the Board for Orthotist/Prosthetist Certification as a certified prosthetist.

SOURCES: Laws, 1991, ch. 401, § 1; Laws, 2011, ch. 542, § 3; Laws, 2012, ch. 340, § 2, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (g) by substituting "Board for Orthotist/Prosthetist" for "Board for Orthetist/Prosthetist." The Joint Committee ratified the correction at its July 13, 2011, meeting.

§ 73-22-3. Certification to practice orthotics or prosthetics; soliciting patronage; penalties and fines for violations.

(1) No person shall practice orthotics or prosthetics in the state unless he or she is certified as an orthotist, prosthetist, or both, by the American Board for Certification in Orthotics and Prosthetics or the Board for Orthotist/Prosthetist Certification. However, nothing in this chapter shall be construed to:

(a) Prevent any person licensed, registered or certified in this state from engaging in the profession or occupation for which he is licensed, registered or certified, as long as he does not represent himself as an orthotist or prosthetist;

(b) Prevent any physician licensed in this state from performing any activities included within the definition of orthotics or prosthetics in the normal course of his practice as a physician, as long as he does not represent himself as an orthotist or prosthetist;

(c) Prevent the practice of orthotics or prosthetics by any person who has engaged in the practice of orthotics or prosthetics for a period of twenty-five (25) or more consecutive years before July 1, 1991, and is engaged in the practice of orthotics or prosthetics on July 1, 1991;

(d) Prohibit or restrict the practice of pharmacy by a licensed pharmacist under Section 73-21-71 et seq., or to prohibit or restrict the operation of a pharmacy or its employees and technicians; or

(e) Prevent or restrict the practice of providing therapeutic diabetic shoes and inserts by an appropriately trained pharmacist or any of the appropriately trained pharmacist's or appropriately trained pharmacy's employees acting under the supervision of a pharmacist.

(2) It is unlawful for any orthotist or prosthetist, or any person on behalf of an orthotist or prosthetist, to solicit the patronage of individual patients for the orthotist or prosthetist by direct contact with a potential customer outside of the place of business of the orthotist or prosthetist.

(3) Whenever any person employs or utilizes the services of an orthotist or prosthetist in connection with the person's business, the measuring, fitting, adjusting and approval of any orthotic or prosthetic device furnished to a patient shall be performed only under the direct supervision of a board certified orthotist, in the case of orthotic patients, or under the direct supervision of a board certified prosthetist, in the case of prosthetic patients. "Direct supervision" means involvement by the certified practitioner in each and every case.

(4) Any person violating any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than Five Hundred Dollars ($500.00) nor more than Two Thousand Dollars ($2,000.00), and may be imprisoned in the county jail for not more than six (6) months. In addition, any person sustaining damages as a result of a violation of any provision of this section may recover the amount of those damages, plus a civil penalty of Two Thousand Five Hundred Dollars ($2,500.00) per incident, in any court of competent jurisdiction.

SOURCES: Laws, 1991, ch. 401, § 2; Laws, 2009, ch. 462, § 1; Laws, 2011, ch. 542, § 4; Laws, 2012, ch. 340, § 1, eff from and after July 1, 2012.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Liability for injury by X-ray. 41 A.L.R.2d 329.

Regulation of prosthetic dentistry. 45 A.L.R.2d 1243.

Liability of physician or surgeon for extending operation or treatment beyond that expressly authorized. 56 A.L.R.2d 695.

Liability of dentist to patient. 83 A.L.R.2d 7.

Liability for injury allegedly resulting from negligence in making hypodermic injection. 45 A.L.R.3d 731.

Products liability in connection with prosthesis or other product designed to be surgically implanted in patient's body. 1 A.L.R.4th 921.

When statute of limitations begins to run in dental malpractice. 3 A.L.R.4th 318.

Recovery, and measure and elements of damages, in action against dentist for breach of contract to achieve particular result or cure. 11 A.L.R.4th 748.

Am Jur. 51 Am. Jur. 2d, Limitation of Actions §§ 113-117, 125-128.

61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 1 et seq.

19 Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Forms 351-355.

4 Am. Jur. Trials 441, 517, Solving Statutes of Limitation Problems, §§ 34-38.

25 Am. Jur. Trials 495, Dental Malpractice Litigation § 9.

CHAPTER 23

Physical Therapists

Article 1. General Provisions 73-23-1
Article 3. Physical Therapy Licensure Compact 73-23-101

ARTICLE 1.

GENERAL PROVISIONS.

SEC.
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73-23-35. License required; board to aid in enforcement; injunction; prescription or referral from certain licensed health care providers for physical therapy services required; exceptions.
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73-23-39. Persons permitted to practice without license; terms.
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73-23-55. Repealed.
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73-23-59. Grounds for disciplinary action; physical or mental examinations may be required; failure to submit to physical or mental examination.
73-23-61. Penalties.
73-23-63. Hearing on denial of license; complaints for violation of chapter; appeals; judicial review.
73-23-64. Disciplinary sanctions; summary suspension of license; consent orders or stipulations; advisory letter; levy of costs for investigation and prosecution.
73-23-65. Physical Therapy Advisory Council Board abolished; transfer of powers to Department of Health.
73-23-67. Confidentiality of information relating to the receipt and investigation of complaints; certain patient records not to be available to the public.

§§ 73-23-1 through 73-23-25. Repealed.

Repealed by Laws of 1980, ch. 543, § 18, eff 60 days after passage (approved May 26, 1980).

§ 73-23-1. [Codes, 1942, § 8877-31; Laws, 1966, ch. 484, § 1]

§ 73-23-3. [Codes, 1942, § 8877-32; Laws, 1966, ch. 484, § 2]

§ 73-23-5. [Codes, 1942, § 8877-33; Laws, 1966, ch. 484, § 3]

§ 73-23-7. [Codes, 1942, § 8877-34; Laws, 1966, ch. 484, § 4]

§ 73-23-9. [Codes, 1942, § 8877-35; Laws, 1966, ch. 484, § 5]

§ 73-23-11. [Codes, 1942, § 8877-36; Laws, 1966, ch. 484, § 6]

§ 73-23-13. [Codes, 1942, § 8877-37; Laws, 1966, ch. 484, § 7; Laws, 1971, ch. 300, § 1; Laws, 1972, ch. 426, § 1]

§ 73-23-15. [Codes, 1942, § 8877-38; Laws, 1966, ch. 484, § 8]

§ 73-23-17. [Codes, 1942, §§ 8877-36, 8877-39; Laws, 1966, ch. 484, §§ 6, 9]

§ 73-23-19. [Codes, 1942, § 8877-40; Laws, 1966, ch. 484, § 10]

§ 73-23-21. [Codes, 1942, § 8877-41; Laws, 1966, ch. 484, § 11]

§ 73-23-23. [Codes, 1942, § 8877-42; Laws, 1966, ch. 484, § 12]

§ 73-23-25. [Codes, 1942, § 8877-43; Laws, 1966, ch. 484, § 13]

Editor's Note — Former § 73-23-1 established the board of physical therapy. Similar provisions may be found in § 73-23-41.

Former § 73-23-3 listed the powers and duties of the board of physical therapy. Similar provisions may be found in § 73-23-43.

Former § 73-23-5 provided that a license was required to practice physical therapy. Similar provisions may be found in § 73-23-35.

Former § 73-23-7 provided for an application for a license. Similar provisions may be found in § 73-23-49.

Former § 73-23-9 provided for an examination for applicants for a license to practice physical therapy. Similar provisions may be found in § 73-23-47.

Former § 73-23-11 provided for the issuance of a license to practice physical therapy after successful completion of an examination.

Former § 73-23-13 provided for the issuance of a license to practice physical therapy without an examination. Similar provisions may be found in § 73-23-51.

Former § 73-23-15 provided for the issuance of temporary licenses to practice physical therapy. Similar provisions may be found in § 73-23-53.

Former § 73-23-17 provided for the renewal of licenses to practice physical therapy. Similar provisions may be found in § 73-23-57.

Former § 73-23-19 provided for the refusal, suspension, or revocation of a license to practice physical therapy. Similar provisions may be found in § 73-23-59.

Former § 73-23-21 provided for a right to have decisions of the board reviewed. Similar provisions may be found in § 73-23-63.

Former § 73-23-23 provided for the deposit of funds received by the board, and for the payment of a surety bond by the secretary-treasurer of the board. Similar provisions may be found in §§ 73-23-41 and 73-23-45.

Former § 73-23-25 provided for penalties. Similar provision may be found in § 73-23-61.

§ 73-23-27. Repealed.

Repealed by Laws of 1988, ch. 331, § 18, eff from and after July 1, 1988. [Laws, 1979, ch. 301, § 38; Laws, 1980, ch. 543, § 20]

Editor's Note — Former § 73-23-27 provided for the repeal of §§ 73-23-31 through 73-23-63.

§ 73-23-31. Short title.

This chapter shall be known and may be cited as the "Mississippi Physical Therapy Practice Law."

SOURCES: Laws, 1980, ch. 543, § 1; reenacted, Laws, 1988, ch. 331, § 1, eff from and after July 1, 1988.

Cross References — Mississippi Physical Therapy Board abolished and powers transferred to Department and Board of Health, see § 73-23-65.

ATTORNEY GENERAL OPINIONS

The Mississippi State Department of Health, acting on behalf of the State Board of Health, is the legal entity charged by law with the regulation of physical therapy, or, using the language of the bylaws of the Federation of the State Boards of Physical Therapy, the Department of Health is the jurisdictional body legally authorized to regulate physical therapy practice, not the physical therapy advisory council. Thompson, July 10, 1998, A.G. Op. #98-0309.

RESEARCH REFERENCES

ALR. Licensing and regulation of practice of physical therapy. 8 A.L.R.5th 825.

§ 73-23-33. Definitions.

As used in this chapter unless the context or subject matter otherwise requires:

(a) "Physical therapy" or "physiotherapy," which terms are deemed identical and interchangeable, means the art and science of a health specialty concerned with the prevention of disability, and the physical rehabilitation for congenital or acquired physical or mental disabilities, resulting from or secondary to injury or disease. The "practice of physical therapy" means the practice of the health specialty and encompasses physical therapy evaluation, treatment planning, treatment administration, instruction and consultative services, including:

(i) Performing and interpreting tests and measurements as an aid to physical therapy treatment, for the purpose of correcting or alleviating any physical condition and to prevent the development of any physical or mental disability within the scope of physical therapy; and the performance of neuromuscular-skeletal tests and measurements as an aid in diagnosis, evaluation or determination of the existence of and the extent of any body malfunction;

(ii) Planning initial and subsequent treatment programs, on the basis of test findings; and

(iii) Administering treatment by therapeutic exercise, neurodevelopmental procedures, therapeutic massage, mechanical devices and therapeutic agents which employ the physical, chemical and other properties of air, water, heat, cold, electricity, sound and radiant energy for the purpose of correcting or alleviating any physical condition or preventing the development of any physical or mental disability. The use of roentgen rays and radium for any purpose, and the use of electricity for surgical purposes including cauterization, are not part of physical therapy;

(b) "Physical therapist" means a person licensed in this state to practice physical therapy as defined in this chapter, and whose license is in good standing, or a person who holds the privilege to practice;

(c) "Physical therapist assistant" means a health care worker who assists a physical therapist in the provision of physical therapy under the direct, on-site supervision of the physical therapist. The physical therapist assistant may perform physical therapy procedures and related tasks that have been selected and delegated by the supervising physical therapist, but shall not perform the following physical therapy activities: interpretation of referrals; physical therapy initial evaluation and reevaluation; identification, determination or modification of plans of care (including goals and treatment programs); final discharge assessment/evaluation or establishment of the discharge plan; or therapeutic techniques beyond the skill and knowledge of the physical therapist assistant;

(d) "Referral" means the written or oral designation of physical therapy services by a doctor of medicine, dentistry, osteopathy, podiatry or chiropractic, or by a physician assistant or nurse practitioner, holding a license in good standing; and the instruction therefor may be as detailed or as general as the doctor, physician assistant or nurse practitioner in his or her sound discretion deems necessary in the particular case;

(e) "Board" means the State Board of Physical Therapy established in Section 73-23-41;

(f) "Direct, on-site supervision" means face-to-face oversight by a licensed physical therapist or physical therapist who holds the privilege to practice at regular intervals, as prescribed in regulations adopted by the board, of the services provided to a patient by a licensed physical therapist assistant or physical therapist assistant who holds the privilege to practice;

(g) "Direct supervision" means face-to-face oversight at regular intervals of a physical therapist issued a temporary license under Section 73-23-53(1) by a licensed physical therapist. Such direct supervision shall be in accordance with the regulations adopted by the board; however, a licensed physical therapist shall be authorized to have direct supervision over not more than four (4) physical therapist assistants at one time.

(h) "Privilege to practice" means the authorization to practice as a physical therapist in this state or work as a physical therapist assistant in this state under the Physical Therapy Licensure Compact provided for in Section 73-23-101.

(i) "Licensee" means a person who has been issued a license to practice physical therapy or work as a physical therapy assistant in the state or who holds the privilege to practice physical therapy or work as a physical therapy assistant in the state.

SOURCES: Laws, 1980, ch. 543, § 2; reenacted, Laws, 1988, ch. 331, § 2; Laws, 1989, ch. 528, § 1; Laws, 1990, ch. 501, § 2; Laws, 1992, ch. 443, § 1; Laws, 1997, ch. 475, § 1; Laws, 1997, ch. 581, § 1; Laws, 2002, ch. 449, § 2; Laws, 2006, ch. 510, § 3; Laws, 2008, ch. 448, § 1; Laws, 2012, ch. 370, § 1; Laws, 2017, ch. 326, § 2, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 1 of ch. 475, Laws of 1997, amended this section, effective July 1, 1997 (approved March 27, 1997). Section 1 of ch. 581, Laws of 1997, effective July 1, 1997 (approved April 24, 1997), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 581, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2017 amendment added “or a person who holds the privilege to practice” at the end of (b); inserted “or physical therapist who holds the privilege to practice” and “or physical therapist assistant who holds the privilege to practice” in (f); and added (h) and (i).

Cross References — Practice of acupuncture does not include the practice of physical therapy as defined in this chapter, see § 73-71-17.

§ 73-23-35. License required; board to aid in enforcement; injunction; prescription or referral from certain licensed health care providers for physical therapy services required; exceptions.

(1) A person, corporation, association or business entity shall not use in connection with that person’s or party’s name or the name or activity of the business the words “physical therapy,” “physical therapist,” “physiotherapy,” “physiotherapist,” “registered physical therapist,” “doctor of physical therapy,” “physical therapist assistant,” the letters “PT,” “DPT,” “LPT,” “RPT,” “PTA,” “LPTA,” and/or any other words, abbreviations, or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied unless such services are provided by or under the direction of a physical therapist or physical therapist assistant, as the case may be, with a valid and current license issued pursuant to this chapter or with the privilege to practice. It shall be unlawful to employ an unlicensed physical therapist or physical therapist assistant to provide physical therapy services.

(2) The board shall aid the state’s attorneys of the various counties in the enforcement of the provisions of this chapter and the prosecution of any violations thereof. In addition to the criminal penalties provided by this chapter, the civil remedy of injunction shall be available to restrain and enjoin violations of any provisions of this chapter without proof of actual damages sustained by any person. For purposes of this chapter, the board, in seeking an injunction, need only show that the defendant violated subsection (1) of this section to establish irreparable injury or a likelihood of a continuation of the violation.

(3) A physical therapist licensed under this chapter or privileged to practice shall not perform physical therapy services without a prescription or referral from a person licensed as a physician, dentist, osteopath, podiatrist,

chiropractor, physician assistant or nurse practitioner. However, a physical therapist licensed under this chapter or privileged to practice may perform physical therapy services without a prescription or referral under the following circumstances:

(a) To children with a diagnosed developmental disability pursuant to the patient's plan of care.

(b) As part of a home health care agency pursuant to the patient's plan of care.

(c) To a patient in a nursing home pursuant to the patient's plan of care.

(d) Related to conditioning or to providing education or activities in a wellness setting for the purpose of injury prevention, reduction of stress or promotion of fitness.

(e)(i) To an individual for a previously diagnosed condition or conditions for which physical therapy services are appropriate after informing the health care provider rendering the diagnosis. The diagnosis must have been made within the previous one hundred eighty (180) days. The physical therapist shall provide the health care provider who rendered the diagnosis with a plan of care for physical therapy services within the first fifteen (15) days of physical therapy intervention.

(ii) Nothing in this chapter shall create liability of any kind for the health care provider rendering the diagnosis under this paragraph (e) for a condition, illness or injury that manifested itself after the diagnosis, or for any alleged damages as a result of physical therapy services performed without a prescription or referral from a person licensed as a physician, dentist, osteopath, podiatrist, chiropractor, physician assistant or nurse practitioner, the diagnosis and/or prescription for physical therapy services having been rendered with reasonable care.

(4) Physical therapy services performed without a prescription or referral from a person licensed as a physician, dentist, osteopath, podiatrist, chiropractor, physician assistant or nurse practitioner shall not be construed to mandate coverage for physical therapy services under any health care plan, insurance policy, or workers' compensation or circumvent any requirement for preauthorization of services in accordance with any health care plan, insurance policy or workers' compensation.

(5) Nothing in this section shall restrict the Division of Medicaid from setting rules and regulations regarding the coverage of physical therapy services and nothing in this section shall amend or change the Division of Medicaid's schedule of benefits, exclusions and/or limitations related to physical therapy services as determined by state or federal regulations and state and federal law.

SOURCES: Laws, 1980, ch 543, § 3; reenacted, Laws, 1988, ch. 331, § 3; Laws, 1989, ch. 528, § 2; Laws, 1990, ch. 501, § 3; Laws, 1995, ch. 400, § 1; Laws, 2002, ch. 449, § 3; Laws, 2006, ch. 510, § 1; Laws, 2008, ch. 448, § 2; Laws, 2012, ch. 370, § 2; Laws, 2017, ch. 326, § 3, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment added "or with the privilege to practice" at the end of the next-to-last sentence of (1); and inserted "or privileged to practice" both times it appears in (3).

Cross References — Persons permitted to practice without a license, see § 73-23-39.

Except as authorized in this section, applying or offering to apply physical therapy without referral of licensed physician, dentist, osteopath, podiatrist, chiropractor or nurse practitioner as grounds for disciplinary action, see § 73-23-59.

Penalties, see § 73-23-61.

Hearing, appeals, see § 73-23-63.

Disciplinary sanctions, see § 73-23-64.

Injunction to prevent unlicensed practice of profession generally, see § 73-51-1.

ATTORNEY GENERAL OPINIONS

Physical Therapist Aides or Technicians are permitted to perform such duties as assisting patients with gait and ambulation, applying hot packs, putting patients in whirlpools, assisting with application of ultrasound and transporting patients to and from their rooms; it is unlawful to bill for those services as physical therapy services, since those services are not being provided by licensed physical therapists or physical therapist assistants. Cobb, Oct. 22, 1992, A.G. Op. #92-0713.

RESEARCH REFERENCES

ALR. Licensing and regulation of practice of physical therapy. 8 A.L.R.5th 825.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers §§ 17, 46.

CJS. 53 C.J.S., Licenses, §§ 58, 59 et seq.

§ 73-23-37. Acts and services not prohibited.

Nothing in this chapter shall prohibit:

(a) Any persons licensed or registered in this state, under another law, from carrying out the therapy or practice for which they are duly licensed or registered;

(b) Schools, YMCA's, athletic clubs and similar organizations from furnishing services to their players and members, provided that they do not represent themselves as physical therapists, as physical therapist assistants, or as providing physical therapy services;

(c) The performance by any person of simple mechanical or machine-assisted acts in the physical care of a patient, not requiring the knowledge and skill of a physical therapist under the order or direction of a licensed doctor of medicine or dentistry or of a physical therapist assistant under the direct, on-site supervision of a licensed physical therapist.

SOURCES: Laws, 1980, ch 543, § 4; reenacted, Laws, 1988, ch. 331, § 4; Laws, 1989, ch. 528, § 3, eff from and after July 1, 1989.

Cross References — Prohibited acts and services, see § 73-23-35.

Persons permitted to practice without a license, see § 73-23-39.

§ 73-23-39. Persons permitted to practice without license; terms.

The following persons shall be permitted to practice physical therapy in this state without obtaining a license under this chapter, upon the terms and conditions specified herein:

(a) Students enrolled in accredited physical therapist or physical therapist assistant educational programs, while engaged in completing a clinical requirement for graduation, which must be performed under the direct, on-site supervision of a licensed physical therapist;

(b) Physical therapists licensed in other jurisdictions while enrolled in graduate educational programs in this state that include the evaluation and treatment of patients as part of their experience required for credit, so long as the student is not at the same time gainfully employed in this state as a physical therapist;

(c) Practitioners of physical therapy or persons acting as physical therapist assistants who are employed in the United States armed services, United States Public Health Service, Veterans Administration or other federal agency; however, if such individual engages in the practice of physical therapy or acts as a physical therapist assistant outside of the scope of official duty, he must be licensed as herein provided;

(d) Physical therapists licensed in other jurisdictions who are teaching or participating in physical therapy education projects, demonstrations or courses in this state, or providing physical therapy services to visiting established athletic organizations, performing arts companies or volunteering to provide services to competitors in events such as the Olympics or dance competitions in which their participation in the evaluation and treatment of patients is minimal.

(e) Physical therapist assistants licensed in other jurisdictions who are teaching or participating in physical therapy education projects, demonstrations or courses in this state, or providing physical therapy services to visiting established athletic organizations, performing arts companies or volunteering to provide services to competitors in events such as the Olympics or dance competitions in which their participation in the treatment of patients is minimal.

(f) Licensees who exercise the privilege to practice under the terms and provisions of the Physical Therapy Licensure Compact provided for in Section 73-23-101.

SOURCES: Laws, 1980, ch. 543, § 5; reenacted, Laws, 1988, ch. 331, § 5; Laws, 1989, ch. 528, § 4; Laws, 2008, ch. 448, § 3; Laws, 2017, ch. 326, § 4, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment added (f).

Cross References — Prohibited acts and services, see § 73-23-35.

Acts and services not prohibited, see § 73-23-37.

§ 73-23-41. State Board of Physical Therapy established; membership; terms of appointment; election of officers; orientation; removal of board member for cause; meetings; compensation; immunity from liability.

(1) There is established a State Board of Physical Therapy that shall consist of seven (7) members appointed by the Governor, with the advice and consent of the Senate. Four (4) members shall be physical therapists, one (1) member shall be a physical therapist assistant, and one (1) member shall be a physician, each of whom possesses unrestricted licenses to practice in his or her profession. The Governor shall also appoint one (1) member who shall be a consumer at large who is not associated with or financially interested in any health care profession and who has an interest in consumer rights. Each of the four (4) members who are physical therapists shall be appointed from a list of three (3) persons from each of the four (4) Mississippi congressional districts, as such districts currently exist, submitted by the Mississippi Physical Therapy Association, all of whom must be residents of Mississippi and must have engaged in the practice of physical therapy within the state for at least four (4) years. The terms of the members of the board shall be staggered, so that the terms of no more than two (2) members shall expire in any year. Members appointed to the board shall serve for four-year terms and until their successors are appointed and confirmed, except that members of the board who are appointed to fill vacancies which occur before the expiration of a former member's full term shall serve the unexpired portion of such term. No person shall be appointed for more than two (2) consecutive four-year terms. However, any board member initially appointed for less than a full four-year term is eligible to serve for two (2) additional consecutive four-year terms.

(2) The board shall annually elect a chairman, secretary and treasurer. The board shall provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this chapter and board rules, regulations, policies and procedures. A member may be removed by the board only for due cause. Failure to attend at least half of the board meetings in a fiscal year shall constitute cause. The board shall meet at least once each quarter, and those meetings shall be held in compliance with the Open Meetings Law (Section 25-41-1 et seq.). A majority of board members shall constitute a quorum for the transaction of business. The board shall keep an official record of its meetings. Whenever a vacancy occurs in the membership of the board before the expiration of a term of office, the Governor shall appoint a qualified successor to fill the unexpired term. Members of the board shall receive the per diem authorized under Section 25-3-69 for each day spent actually discharging their official duties, and shall receive reimbursement for mileage and necessary travel expenses incurred as provided in Section 25-3-41. A board member who acts within the scope of board duties, without malice and in the reasonable belief that the member's action is warranted by law is immune from civil liability.

SOURCES: Laws, 1980, ch. 543, § 6; reenacted, Laws, 1988, ch. 331, § 6; Laws, 1990, ch. 501, § 4; Laws, 1997, ch. 475, § 2; Laws, 2002, ch. 449, § 1; Laws, 2008, ch. 448, § 4, eff from and after July 1, 2008.

Cross References — Official bonds generally, see §§ 25-1-15, 25-1-17.

ATTORNEY GENERAL OPINIONS

The Mississippi State Board of Physical Therapy must elect board members to the positions of chairman, secretary, and treasurer. All requisitions must be signed by the treasurer, and that duty may not be delegated to any other person. Boyette, March 2, 2007, A.G. Op. #07-00089, 2007 Miss. AG LEXIS 84.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 58, 59.

§ 73-23-43. Powers and duties of board; register of physical therapists.

(1) The board shall have the following general powers and duties:

(a) To examine and determine the qualifications and fitness of applicants for licenses to practice as physical therapists and licenses to act as physical therapist assistants in this state and prepare or approve and conduct all examinations of applicants for licensure;

(b) To issue, renew, deny, suspend or revoke licenses to practice as physical therapists and licenses to act as physical therapist assistants in this state or otherwise discipline licensed physical therapists and physical therapist assistants;

(c) To investigate alleged or suspected violations of the provisions of this chapter or other laws of this state pertaining to physical therapy and any rules and regulations adopted by the board;

(d) To establish reasonable fees for application for examination, certificates of licensure and renewal, and other services provided by the board;

(e) To adopt, amend or repeal any rules or regulations necessary to carry out the purposes of this chapter and the duties and responsibilities of the board, in accordance with Section 25-43-1 et seq. Such rules, when lawfully adopted, shall have the effect of law;

(f) To hire appropriate support personnel to carry out the provisions of this chapter;

(g) To adopt a code of ethics for physical therapists and physical therapist assistants licensed under this chapter which may be the current code of ethics of the American Physical Therapy Association;

(h) To regulate the practice of physical therapy by interpreting and enforcing this chapter;

(i) To provide for the examination of physical therapists and physical therapist assistants;

(j) To establish mechanisms for assessing the continuing professional competence of physical therapists and physical therapist assistants to practice physical therapy;

(k) To set criteria for continuing education;

(*l*) To establish and collect fees for sustaining the necessary operation and expenses of the board;

(m) To publish, at least annually, final disciplinary action against a licensee;

(n) To report final disciplinary action taken against a licensee to other state or federal regulatory agencies and to a national disciplinary database recognized by the board or as required by law;

(o) To share documents, materials, or other information, including confidential and privileged documents, materials, or information, received or maintained by the board with other state or federal agencies, and with a national disciplinary database recognized by the board or as required by law provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(p) To participate in or conduct performance audits;

(q) To, through its employees and/or representatives, enter and make inspections of any place where physical therapy is practiced and inspect and/or copy any record pertaining to clients or the practice of physical therapy under this chapter;

(r) To conduct a criminal history records check on licensees whose licensure is subject to investigation by the board and on applicants for licensure. In order to determine the applicant's or licensee's suitability for licensing, the applicant or licensee shall be fingerprinted. The board shall submit the fingerprints to the Department of Public Safety for a check of the state criminal records and forward to the Federal Bureau of Investigation for a check of the national criminal records. The Department of Public Safety shall disseminate the results of the state check and the national check to the board for a suitability determination. The board shall be authorized to charge and collect from the applicant or licensee, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant or licensee.

Any and all state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency; and

(s) Perform the duties prescribed by the Physical Therapy Licensure Compact provided for in Section 73-23-101. The State Board of Physical Therapy shall be the physical therapy licensing board.

The powers and duties enumerated above are granted for the purpose of enabling the board to safeguard the public health, safety and welfare against unqualified or incompetent practitioners of physical therapy and persons acting as physical therapist assistants, and are to be liberally construed to accomplish this objective;

(2) The board shall maintain a register listing the name of every physical therapist and physical therapist assistant licensed to practice in this state, his last known place of business and last known place of residence, and the date and number of his license. The board shall, at least once a year, compile a list of physical therapists and physical therapist assistants licensed to practice in this state and such a list shall be available to any person upon application to the board and the payment of such charges as may be fixed by it.

SOURCES: Laws, 1980, ch. 543, § 7; reenacted, Laws, 1988, ch. 331, § 7; Laws, 1989, ch. 528, § 5; Laws, 1990, ch. 501, § 5; Laws, 2002, ch. 449, § 4; Laws, 2008, ch. 448, § 5; Laws, 2017, ch. 326, § 5, eff from and after July 1, 2017.

Editor's Note — Pursuant to § 25-43-1.101(3), any reference in this section to § 25-43-1 et seq. shall be deemed to mean and refer to § 25-43-1.101 et seq.

Amendment Notes — The 2017 amendment added (s) and made related stylistic changes.

Cross References — Fees and other monies collected by board to be paid into physical therapy Fund, see § 73-23-45.

Mississippi Public Records Act of 1983 generally, see § 25-61-1 et seq.

ATTORNEY GENERAL OPINIONS

The Mississippi State Board of Physical Therapy must elect board members to the positions of chairman, secretary, and treasurer. All requisitions must be signed by the treasurer, and that duty may not be delegated to any other person. Boyette, March 2, 2007, A.G. Op. #07-00089, 2007 Miss. AG LEXIS 84.

RESEARCH REFERENCES

ALR. Licensing and regulation of practice of physical therapy. 8 A.L.R.5th 825.

CJS. 53 C.J.S., Licenses §§ 58, 59.

§ 73-23-45. Fees and monies received by board paid into Physical Therapy Fund; expenditures and disbursements from fund; audit of financial records.

All fees and other monies collected or received by the board shall be paid into and credited to a special fund that is created in the State Treasury, which shall be known as the "Physical Therapy Fund." Any interest earned on the special fund shall be credited to the special fund and shall not be paid into the State General Fund. Any unexpended monies remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund. Monies in the special fund shall be expended, upon appropriation by the Legislature, exclusively for the purposes of implementing the provisions of this chapter. Disbursement of monies in the special fund shall be made only upon warrants issued by the State Fiscal Officer upon requisitions of the board or its designee. The financial records of the board shall be audited annually by the State Auditor.

SOURCES: Laws, 1980, ch 543, § 8; reenacted, Laws, 1988, ch. 331, § 8; Laws, 1990, ch. 501, § 6; Laws, 2002, ch. 449, § 5; Laws, 2008, ch. 448, § 6, eff from and after July 1, 2008.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

ATTORNEY GENERAL OPINIONS

The Physical Therapy Board has the legal authority to carry out its statutory responsibilities and duties by entering a Memorandum of Understanding with the State Department of Health (DOH), providing that DOH carry out and perform the Board's administrative duties. Greenwald, Aug. 29, 2003, A.G. Op. 03-0228.

Assuming that the State Department of Health (DOH) has received an appropriation, it would be entirely appropriate for DOH to expend funds for the use and benefit of the regulation of the profession of physical therapy. Greenwald, Aug. 29, 2003, A.G. Op. 03-0228.

Any funds collected by the Physical Therapy Board by way of dues, fees, fines, etc., must be deposited into and credited to the special fund created in the State Treasury, be known as the Physical Therapy Fund. Greenwald, Aug. 29, 2003, A.G. Op. 03-0228.

The Mississippi State Board of Physical Therapy must elect board members to the positions of chairman, secretary, and treasurer. All requisitions must be signed by the treasurer, and that duty may not be delegated to any other person. Boyette, March 2, 2007, A.G. Op. #07-00089, 2007 Miss. AG LEXIS 84.

§ 73-23-47. Licensing requirements; licensing examination for physical therapists and physical therapist assistants.

(1) Any person who desires to be licensed under this chapter must: (a) be of good moral character; (b) have graduated from a physical therapy or physical therapist assistant program, as the case may be, accredited by an agency recognized by the United States Department of Education, Office on Postsecondary Education; and (c) pay a nonrefundable examination fee as set by the board; (d) pay an application fee, no part of which shall be refunded; (e) be examined for licensure by the board; and meet the requirements established by the rules of the board. The licensure examination for physical therapists and for physical therapist assistants shall be selected by the board and may

also include an oral examination or practical examination or both at the discretion of the board.

(2) Any person who desires to exercise the privilege to practice under the Physical Therapy Licensure Compact must complete the terms and provisions of the compact as prescribed in Section 73-23-101.

(3) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Laws, 1980, ch. 543, § 9; reenacted, Laws, 1988, ch. 331, § 9; Laws, 1989, ch. 528, § 6; Laws, 1990, ch. 501, § 7; Laws, 1992, ch. 376, § 1; Laws, 1997, ch. 588, § 50; Laws, 2002, ch. 449, § 6; Laws, 2008, ch. 448, § 7; Laws, 2017, ch. 326, § 6, eff from and after July 1, 2017.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Amendment Notes — The 2017 amendment designated the former first and second paragraphs as (1) and (3) respectively; and added (2).

Cross References — Disposition of fees collected by board, see § 73-23-45.

Temporary license for persons awaiting results of examination, see § 73-23-53.

Perpetrating or cooperating in fraud or material deception in obtaining license as grounds for disciplinary action see § 73-23-59.

Penalties, see § 73-23-61.

Hearing, appeals, see § 73-23-63.

Disciplinary sanctions, see § 73-23-64.

RESEARCH REFERENCES

ALR. Licensing and regulation of practice of physical therapy. 8 A.L.R.5th 825.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers §§ 46, 48 et seq.

CJS. 53 C.J.S., Licenses § 63.

§ 73-23-49. Application for license; fee schedule; additional fee if national testing service used.

(1) Any person who desires to be licensed as a physical therapist or as a physical therapist assistant shall apply to the board in writing on a form furnished by the board. He shall provide such documents as required by the application forms provided by the board. He shall pay the board at the time of filing an application fee fixed annually by the board, no part of which shall be refunded. In addition thereto, the board shall adopt a fee schedule by rule and regulation. The fee schedule may include, but is not limited to:

(a) Application fee;

(b) Initial license fee;

(c) Renewal of licensure fee;

(d) Registration fee;

(e) Examination fee;

(f) License issued after expiration date fee;
(g) Late renewal fees;
(h) Temporary license fee;
(i) Renewal of temporary license fee;
(j) Reinstatement fees;
(k) Inactive license fees;
(*l*) Restricted license fee;
(m) Lapsed license fees;
(n) Late renewal fees; and
(o) Late penalty fees.

(2) All license, renewal, and other fees currently set by the board by rules and regulations and in effect before July 1, 2008, shall remain in effect until such time as the board, by its rule-making authority, acts to implement new fee schedules pursuant to the provisions of this section. When increased by the board fees may not be increased by more than ten percent (10%) of the previous year's fee.

(3) Notwithstanding subsections (1) and (2) of this section, in all instances where the board uses the services of a national testing service for preparation, administration, or grading of examinations, the board may charge or require the applicant to pay the actual cost of the examination services, in addition to its other fees.

(4) Every person to whom a license is issued pursuant to this chapter shall, as a condition precedent to its issuance, pay the application and any other fee prescribed by the board.

SOURCES: Laws, 1980, ch. 543, § 10; reenacted, Laws, 1988, ch. 331, § 10; Laws, 1989, ch. 528, § 7; Laws, 1990, ch. 501, § 8; Laws, 2002, ch. 449, § 7; Laws, 2008, ch. 448, § 8; brought forward without change, Laws, 2017, ch. 326, § 9, eff from and after July 1, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in (1)(f) and (i). The word "fee" was added to the end of each. The Joint Committee ratified the correction at its August 5, 2008, meeting.

Amendment Notes — The 2017 amendment brought the section forward without change.

Cross References — Disposition of fees collected by board, see § 73-23-45.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

CJS. 53 C.J.S., Licenses §§ 62, 65, 66, 70-72.

§ 73-23-51. Licensing of physical therapists or physical therapist assistants trained in another state; licensing of physical therapists trained in foreign country; examination requirements.

(1) The board may license as a physical therapist or as a physical therapist assistant, and furnish a certificate of licensure without examination to, any applicant who presents evidence, satisfactory to the board, of having passed an examination before a similar lawfully authorized examining agency or board in physical therapy of another state or the District of Columbia, if the standards for registration in physical therapy or for licensure as a physical therapist assistant in such other state or district are determined by the board to be as high as those of this state. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(2) Any person who has been trained as a physical therapist in a foreign country and desires to be licensed under this chapter and who: (a) is of good moral character; (b) holds a diploma from an educational program for physical therapists approved by the board; (c) submits documentary evidence to the board that he has completed a course of professional instruction substantially equivalent to that obtained by an applicant for licensure; (d) demonstrates satisfactory proof of proficiency in the English language; and (e) meets other requirements established by rules of the board, may make application on a form furnished by the board for examination as a foreign-trained physical therapist. At the time of making such application, the applicant shall pay the fee prescribed by the board, no portion of which shall be returned.

Any person who desires to be licensed under this subsection shall take an examination approved by the board and shall obtain a permanent license. If this requirement is not met, the license of the foreign-trained therapist may be revoked.

SOURCES: Laws, 1980, ch. 543, § 11; reenacted, Laws, 1988, ch. 331, § 11; Laws, 1989, ch. 528, § 8; Laws, 1990, ch. 501, § 9; Laws, 1992, ch. 376, § 2; Laws, 2002, ch. 449, § 8; Laws, 2008, ch. 448, § 9; Laws, 2013, ch. 350, § 22; brought forward without change, Laws, 2017, ch. 326, § 10, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment brought the section forward without change.

Cross References — Issuance of temporary license to person trained in foreign country if person meets all requirements of this section, see § 73-23-53.

Having disciplinary action taken against licensee's license in another state on grounds for disciplinary action, see § 73-23-59.

Comparable Laws from other States — Alabama: Code of Ala. § 34-24-214.
Arkansas: A.C.A. § 17-93-306.
Florida: Fla. Stat. § 486.081.
Georgia: O.C.G.A. § 43-33-15.
Louisiana: La. R.S. § 37:2412.
North Carolina: N.C. Gen. Stat. § 90-270.31.

South Carolina: S.C. Code Ann. § 40-45-240.
Tennessee: Tenn. Code Ann. § 63-13-307.
Virginia: Va. Code Ann. § 54.1-3479.

RESEARCH REFERENCES

ALR. Licensing and regulation of practice of physical therapy. 8 A.L.R.5th 825.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

61 Am. Jur. 2d, Physicians, Surgeons and Other Healers §§ 57 et seq.

§ 73-23-53. Temporary license.

(1) A temporary license to practice as a physical therapist or physical therapist assistant may be granted to those persons meeting the requirements stated in Section 73-23-47 and who (a) have not taken the approved examination, or (b) have taken the approved examination but have not received the results of the examination. The temporary license shall be granted for a period not to exceed ninety (90) days. Any physical therapist granted a temporary license under the provisions of this subsection shall restrict his practice to the State of Mississippi and shall be under the direct supervision of a physical therapist licensed in Mississippi (physical therapy assistants shall be under the direct on-site supervision of a Mississippi licensed physical therapist). Documentation verifying the supervision shall be on file with the board before a temporary license is granted.

(2) The board may by rule provide for the issuance of a temporary license to a physical therapist or a physical therapist assistant licensed in another state who is moving into the state and has filed an application with the board for a permanent license in this state. This temporary license will be granted for a period not to exceed sixty (60) days. The issuance of a temporary license to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(3) Any person granted a temporary license who is required to take the approved examination and fails to take the exam as required by the board or does not pass the required exam shall have the temporary license automatically expire by operation of law and without further action of the board and no license of any type shall be issued until such person has passed an approved examination.

(4) Any person who has taken but not passed the required examination in this or another jurisdiction shall not be eligible for a license of any type until an approved examination is passed.

(5) Any person who has been trained as a physical therapist or physical therapist assistant in a foreign country and desires to be temporarily licensed under this subsection shall, in addition to satisfying such other requirements established by the board, demonstrate proficiency in the English language and meet the other requirements of Section 73-23-51(2) before such temporary license shall be issued.

(6) During a lawfully declared local, state or national disaster or emergency, the board may issue a temporary license to any otherwise qualified

physical therapist or physical therapist assistant licensed and in good standing in another state or territory of the United States and who meets such other requirements as the board may prescribe by rule and regulation.

SOURCES: Laws, 1980, ch. 543, § 12; reenacted, Laws, 1988, ch. 331, § 12; Laws, 1989, ch. 528, § 9; Laws, 1992, ch. 376, § 3; Laws, 1997, ch. 475, § 3; Laws, 2002, ch. 449, § 9; Laws, 2008, ch. 448, § 10; Laws, 2013, ch. 350, § 23, eff from and after July 1, 2013.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

§ 73-23-55. Repealed.

Repealed by Laws of 2002, ch. 449, § 15, eff from and after July 1, 2002.

[Laws, 1980, ch. 543, § 13; reenacted, Laws, 1988, ch. 331, § 13, eff from and after July 1, 1988.]

Editor's Note — Former § 73-23-55 provided for the licensing of physical therapists who were licensed under previously repealed statutes.

§ 73-23-57. Renewal of licenses.

(1) Except as provided in Section 33-1-39, every licensed physical therapist and physical therapist assistant shall apply to the board for a renewal of licensure in a manner prescribed by the rules and regulations of the board, and pay the prescribed fee. Licenses that are not so renewed shall automatically lapse.

(2) The manner in which lapsed licenses shall be revived, extended or reinstated shall be established by the board.

SOURCES: Laws, 1980, ch. 543, § 14; reenacted, Laws, 1988, ch. 331, § 14; Laws, 1989, ch. 528, § 10; Laws, 1990, ch. 501, § 10; Laws, 1997, ch. 475, § 4; Laws, 2002, ch. 449, § 10; Laws, 2007, ch. 309, § 18; Laws, 2008, ch. 448, § 11, eff from and after July 1, 2008.

Cross References — Perpetrating or cooperating in fraud or material deception in renewing license as grounds for disciplinary action, see § 73-23-59.

Penalties, see § 73-23-61.

Hearing, appeals, see § 73-23-63.

Disciplinary sanctions, see § 73-23-64.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 80, 82, 84-86, 88, 91.

§ 73-23-59. Grounds for disciplinary action; physical or mental examinations may be required; failure to submit to physical or mental examination.

(1) Licensees subject to this chapter shall conduct their activities, services and practice in accordance with this chapter and any rules promulgated pursuant hereto. The board, upon satisfactory proof and in accordance with the provisions of this chapter and the regulations of the board, may suspend, revoke, or refuse to issue or renew any license hereunder, or revoke or suspend any privilege to practice, censure or reprimand any licensee, restrict or limit a license, and take any other action in relation to a license or privilege to practice as the board may deem proper under the circumstances upon any of the following grounds:

(a) Negligence in the practice or performance of professional services or activities;

(b) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public in the course of professional services or activities;

(c) Perpetrating or cooperating in fraud or material deception in obtaining or renewing a license or attempting the same or obtaining a privilege to practice;

(d) Being convicted of any crime which has a substantial relationship to the licensee's activities and services or an essential element of which is misstatement, fraud or dishonesty;

(e) Having been convicted of or pled guilty to a felony in the courts of this state or any other state, territory or country. Conviction, as used in this paragraph, shall include a deferred conviction, deferred prosecution, deferred sentence, finding or verdict of guilt, an admission of guilty, or a plea of nolo contendere;

(f) Engaging in or permitting the performance of unacceptable services personally or by others working under the licensee's supervision due to the licensee's deliberate or negligent act or acts or failure to act, regardless of whether actual damage or damages to the public is established;

(g) Continued practice although the licensee has become unfit to practice as a physical therapist or physical therapist assistant due to: (i) failure to keep abreast of current professional theory or practice; or (ii) physical or mental disability; the entry of an order or judgment by a court of competent jurisdiction that a licensee is in need of mental treatment or is incompetent shall constitute mental disability; or (iii) addiction or severe dependency upon alcohol or other drugs which may endanger the public by impairing the licensee's ability to practice;

(h) Having disciplinary action taken against the licensee's license in another state;

(i) Making differential, detrimental treatment against any person because of race, color, creed, sex, religion or national origin;

(j) Engaging in lewd conduct in connection with professional services or activities;

(k) Engaging in false or misleading advertising;

(*l*) Contracting, assisting or permitting unlicensed persons to perform services for which a license is required under this chapter or privilege to practice is required under Section 73-23-101;

(m) Violation of any probation requirements placed on a license or privilege to practice by the board;

(n) Revealing confidential information except as may be required by law;

(o) Failing to inform clients of the fact that the client no longer needs the services or professional assistance of the licensee;

(p) Charging excessive or unreasonable fees or engaging in unreasonable collection practices;

(q) For treating or attempting to treat ailments or other health conditions of human beings other than by physical therapy as authorized by this chapter;

(r) Except as authorized in Section 73-23-35(3), for applying or offering to apply physical therapy, exclusive of initial evaluation or screening and exclusive of education or consultation for the prevention of physical and mental disability within the scope of physical therapy, other than upon the referral of a licensed physician, dentist, osteopath, podiatrist, chiropractor, physician assistant or nurse practitioner; or for acting as a physical therapist assistant other than under the direct, on-site supervision of a licensed physical therapist;

(s) Failing to adhere to the recognized standards of ethics of the physical therapy profession as established by rules of the board;

(t) Failing to complete continuing competence requirements as established by board rule;

(u) Failing to supervise physical therapist assistants in accordance with this chapter and/or board rules;

(v) Engaging in sexual misconduct. For the purpose of this paragraph, sexual misconduct includes, but is not necessarily limited to:

(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a physical therapist or physical therapist assistant/patient relationship exists.

(ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with patients or clients.

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards;

(w) The erroneous issuance of a license or privilege to practice to any person;

(x) Violations of any provisions of this chapter, board rules or regulations or a written order or directive of the board;

(y) Failing to maintain adequate patient records. For the purposes of this paragraph, "adequate patient records" means legible records that contain at minimum sufficient information to identify the patient, an evaluation of objective findings, a diagnosis, a plan of care, a treatment record and a discharge plan;

(z) Failing to report to the board any unprofessional, incompetent or illegal acts that appear to be in violation of this law or any rules established by the board.

(2) The board may order a licensee to submit to a reasonable physical or mental examination if the licensee's physical or mental capacity to practice safely is at issue in a disciplinary proceeding.

(3) Failure to comply with a board order to submit to a physical or mental examination shall render a licensee subject to the summary suspension procedures described in Section 73-23-64.

(4) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license or privilege to practice of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license or privilege to practice for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license or privilege to practice suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license or privilege to practice suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1980, ch. 543, § 15; reenacted, Laws, 1988, ch. 331, § 15; Laws, 1989, ch. 528, § 11; Laws, 1990, ch. 501, § 11; Laws, 1992, ch. 376, § 4; Laws, 1996, ch. 507, § 51; Laws, 1997, ch. 581, § 2; Laws, 2006, ch. 510, § 2; Laws, 2008, ch. 448, § 12; Laws, 2012, ch. 370, § 3; Laws, 2017, ch. 326, § 7, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment inserted "or privilege to practice" once each in the introductory paragraph of (1), (1)(m) and (1)(w), and four times in (4); inserted "or revoke or suspend any privilege to practice" in the introductory paragraph of (1); added "or obtaining a privilege to practice" in (1)(c); and added "or privilege to practice is required under Section 73-23-101" at the end of (1)(*l*).

Cross References — Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

§ 73-23-61. Penalties.

(1) Each violation of Section 73-23-35 shall be punishable by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for not less than ten (10) days nor more than sixty (60) days, or both such fine and imprisonment.

(2) Any person who shall knowingly make a material, false statement in his application for license under this chapter or in response to any inquiry by the board, shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or imprisoned for not less than ten (10) days nor more than sixty (60) days, or both such fine and imprisonment.

SOURCES: Laws, 1980, ch. 543, § 16; reenacted, Laws, 1988, ch. 331, § 16; Laws, 1990, ch. 501, § 12; Laws, 2002, ch. 449, § 11, eff from and after July 1, 2002.

Cross References — Hearing, appeal, see § 73-23-63.

Disciplinary sanctions, see § 73-23-64.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 37 et seq.

61 Am. Jur. 2d, Physicians, Surgeons and Other Healers §§ 106 et seq.

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-23-63. Hearing on denial of license; complaints for violation of chapter; appeals; judicial review.

(1) Any person whose application for a license is denied shall be entitled to a hearing before the board if he submits a written request to the board. Such hearing shall be conducted at the earliest possible date. The board shall fix a time and place for the hearing and shall cause a written copy of the reason for denial of the license, together with a notice of the time and place fixed for the hearing to be served on the applicant requesting the hearing. For purposes of the hearing, the board shall have the power to subpoena persons and compel the production of records, papers and other documents.

(2)(a) All complaints concerning a licensee's business or professional practice shall be received by the board. Each complaint received shall be logged, recording at a minimum the following information: (i) licensee's name; (ii) name of the complaining party, if known; (iii) date of complaint; (iv) brief statement of complaint; and (v) disposition.

(b) Following the investigative process, the board may file formal charges against the licensee. Such formal complaint shall, at a minimum, inform the licensee of the facts which are the basis of the charge and which are specific enough to enable the licensee to defend against the charges.

(c) Each licensee whose conduct is the subject of a formal charge which seeks to impose disciplinary action against the licensee shall be served notice of the formal charge at least thirty (30) days before the date of the hearing, which hearing shall be presided over by the board or the board's designee. Service shall be considered to have been given if the notice was personally served on the licensee or applicant or if the notice was sent by certified, United States mail to the licensee's or applicant's last known address as listed on record with the board.

(d) The notice of the formal charge shall consist at a minimum of the following information:

(i) The time, place and date of the hearing;

(ii) That the licensee shall appear personally at the hearing and may be represented by counsel;

(iii) That the licensee shall have the right to produce witnesses and evidence in the licensee's behalf and shall have the right to cross-examine adverse witnesses and evidence;

(iv) That the hearing could result in disciplinary action being taken against the licensee's license;

(v) That rules for the conduct of these hearings exist and it may be in the licensee's best interest to obtain a copy;

(vi) That the board or its designee shall preside at the hearing and following the conclusion of the hearing shall make findings of facts, conclusions of law and recommendations, separately stated, to the board as to what disciplinary action, if any, should be imposed on the licensee;

(vii) The board or its designee shall hear evidence produced in support of the formal charges and contrary evidence produced by the licensee. At the conclusion of the hearing, the board shall issue an order; and

(viii) All proceedings pursuant to this section are matters of public record and shall be preserved pursuant to state law.

(3) In addition to other remedies provided by law or in equity, any applicant or licensee aggrieved by any action of the board may appeal the action of the board to the chancery court of the county of his residence, if he be a resident of this state, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if he be a nonresident of this state, and the court after a hearing may modify, affirm or reverse the judgment of the board or may remand the case to the board for further proceedings. An appeal shall be filed within thirty (30) days immediately following the mailing or delivery to the applicant or licensee of a copy of the order of judgment of the board, unless the court, for good cause shown, extends the time. Appeals may be had to the Supreme Court of the State of Mississippi as provided by law from any final judgment of the chancery court. If the board appeals from any judgment of the chancery court, no bond shall be required of it in order to perfect its appeal. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SOURCES: Laws, 1980, ch. 543, § 17; reenacted, Laws, 1988, ch. 331, § 17; Laws, 1990, ch. 501, § 13; Laws, 1996, ch. 507, § 52; Laws, 1997, ch. 475, § 5; Laws, 2002, ch. 449, § 12; Laws, 2008, ch. 448, § 13, eff from and after July 1, 2008.

Cross References — Availability of injunction to restrain violations, see § 73-23-35.

Penalties, see § 73-23-61.

Disciplinary sanctions, see § 73-23-64.

Injunction to restrain unlicensed practice of profession generally, see § 73-51-1.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

ALR. Liability for injuries or death as a result of physical therapy. 53 A.L.R.3d 1250.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

61 Am. Jur. 2d, Physicians, Surgeons and Other Healers §§ 89 et seq.

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-23-64. Disciplinary sanctions; summary suspension of license; consent orders or stipulations; advisory letter; levy of costs for investigation and prosecution.

(1) The board may impose any of the following sanctions, singly or in combination, when it finds an applicant or a licensee has committed any violation listed in Section 73-23-59:

(a) Revocation of the license or privilege to practice;

(b) Suspension of the license or privilege to practice, for any period of time;

(c) Censure the licensee;

(d) Impose a monetary penalty in an amount not to exceed Five Hundred Dollars ($500.00) for the first violation, One Thousand Dollars ($1,000.00) for the second violation, and Five Thousand Dollars ($5,000.00) for the third violation and for each subsequent violation;

(e) Place a licensee on probationary status and require the licensee to submit to any of the following: (i) report regularly to the board, or its designee, upon matters which are the basis of probation; (ii) continue to renew professional education until a satisfactory degree of skill has been attained in those areas which are the basis of probation; or (iii) such other reasonable requirements or restrictions as are proper;

(f) Refuse to issue or renew a license or refuse to issue a privilege to practice;

(g) Revoke probation which has been granted and impose any other disciplinary action in this subsection when the requirements of probation have not been fulfilled or have been violated;

(h) Restrict a license or privilege to practice; or

(i) Accept a voluntary surrendering of a license or privilege to practice based on an order of consent from the board.

(2) The board may summarily suspend a license or privilege to practice under this chapter without a hearing simultaneously with the filing of a formal complaint and notice for a hearing provided under this section pending proceedings before the board. If the board suspends summarily a license or privilege to practice under the provisions of this subsection, a hearing must begin within twenty (20) days after such suspension begins, unless continued at the request of the licensee.

(3) Disposition of any formal complaint may be made by consent order or stipulation between the board and the licensee.

(4) The board may reinstate any licensee to good standing under this chapter if the board is satisfied that the applicant's renewed practice is in the public interest. The procedure for the reimbursement of a license or privilege to practice that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(5) The board shall seek to achieve consistency in the application of the foregoing sanctions, and significant departure from prior decisions involving similar conduct shall be explained by the board.

(6) In addition to any other power that it has, the board may issue an advisory letter to a licensee if it finds that the information received in a complaint or an investigation does not merit disciplinary action against the licensee.

(7) The board may also assess and levy upon any licensee or applicant for licensure or the privilege to practice the costs incurred or expended by the board in the investigation and prosecution of any licensure or disciplinary action, including, but not limited to, the cost of process service, court reports, expert witnesses, investigators, and attorney's fees.

SOURCES: Laws, 1992, ch. 376, § 5; Laws, 2002, ch. 449, § 13; Laws, 2008, ch. 448, § 14; Laws, 2017, ch. 326, § 8, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment inserted "or privilege to practice" once each in (1)(a), (1)(b), and (1)(h)(4), and twice in (2); inserted "or refuse to issue a privilege to practice" in (1)(f); and inserted "or the privilege to practice" in (7).

Cross References — Grounds for disciplinary action, see § 73-23-59.

Penalties, see § 73-23-61.

Hearing, appeal, see § 73-23-63.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

§ 73-23-65. Physical Therapy Advisory Council Board abolished; transfer of powers to Department of Health.

The Physical Therapy Advisory Council is abolished. All of the powers and duties of the State Board of Health and the State Department of Health regarding the licensure and regulation of the profession of physical therapy in the State of Mississippi are transferred to the State Board of Physical Therapy. Any property, contractual rights and obligations and unexpended funds of the

State Board of Health and the State Department of Health relating to the licensure and regulation of the profession of physical therapy in the State of Mississippi are transferred to the State Board of Physical Therapy.

SOURCES: Laws, 1990, ch. 501, § 1; Laws, 2002, ch. 449, § 14, eff from and after July 1, 2002.

§ 73-23-67. Confidentiality of information relating to the receipt and investigation of complaints; certain patient records not to be available to the public.

The board shall keep all information relating to the receipt and investigation of complaints filed against licensees or applicants confidential until the information is disclosed in the course of the investigation or any subsequent proceeding before the board. Patient records, including clinical records, files, any other report or oral statement relating to diagnostic findings or treatment of patients, any information from which a patient or his or her family might be identified, or information received and records or reports kept by the board as a result of an investigation made pursuant to this chapter shall not be available to the public and shall be kept confidential by the board.

SOURCES: Laws, 2008, ch. 448, § 15, eff from and after July 1, 2008.

ARTICLE 3.

PHYSICAL THERAPY LICENSURE COMPACT.

SEC.
73-23-101. Physical Therapy Licensure Compact created; purpose; state participation; compact privilege; active duty military personnel or spouses; adverse actions; Physical Therapy Compact Commission; data system; rulemaking; oversight; dispute resolution, enforcement; compact effective date; withdrawal; amendment; construction; severability.

§ 73-23-101. Physical Therapy Licensure Compact created; purpose; state participation; compact privilege; active duty military personnel or spouses; adverse actions; Physical Therapy Compact Commission; data system; rulemaking; oversight; dispute resolution, enforcement; compact effective date; withdrawal; amendment; construction; severability.

The Physical Therapy Licensure Compact is enacted into law and entered into by this state with any and all states legally joining in the Compact in accordance with its terms, in the form substantially as follows:

PHYSICAL THERAPY LICENSURE COMPACT

SECTION 1.

PURPOSE

The purpose of this Compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This Compact is designed to achieve the following objectives:

1. Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;
2. Enhance the states' ability to protect the public's health and safety;
3. Encourage the cooperation of member states in regulating multi-state physical therapy practice;
4. Support spouses of relocating military members;
5. Enhance the exchange of licensure, investigative, and disciplinary information between member states; and
6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

SECTION 2.

DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

1. "Active duty military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Section 1209 and 1211.
2. "Adverse action" means disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.
3. "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes, but is not limited to, substance abuse issues.
4. "Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

5. "Continuing competence" means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

6. "Data system" means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.

7. "Encumbered license" means a license that a physical therapy licensing board has limited in any way.

8. "Executive Board" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

9. "Home state" means the member state that is the licensee's primary state of residence.

10. "Investigative information" means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

11. "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.

12. "Licensee" means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

13. "Member state" means a state that has enacted the Compact.

14. "Party state" means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

15. "Physical therapist" means an individual who is licensed by a state to practice physical therapy.

16. "Physical therapist assistant" means an individual who is licensed/certified by a state and who assists the physical therapist in selected components of physical therapy.

17. "Physical therapy," "physical therapy practice," and "the practice of physical therapy" mean the care and services provided by or under the direction and supervision of a licensed physical therapist.

18. "Physical Therapy Compact Commission" or "Commission" means the national administrative body whose membership consists of all states that have enacted the Compact.

19. "Physical therapy licensing board" or "licensing board" means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

20. "Remote state" means a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

21. "Rule" means a regulation, principle, or directive promulgated by the Commission that has the force of law.

22. "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy.

SECTION 3.

STATE PARTICIPATION IN THE COMPACT

A. To participate in the Compact, a state must:

1. Participate fully in the Commission's data system, including using the Commission's unique identifier as defined in rules;
2. Have a mechanism in place for receiving and investigating complaints about licensees;
3. Notify the Commission, in compliance with the terms of the Compact and rules, of any adverse action or the availability of investigative information regarding a licensee;
4. Fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions in accordance with Section 3.B.;
5. Comply with the rules of the Commission;
6. Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the Commission; and
7. Have continuing competence requirements as a condition for license renewal.

B. Upon adoption of this Compact, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and submit this information to the Federal Bureau of Investigation for a criminal background check in accordance with 28 U.S.C. Section 534 and 42 U.S.C. Section 14616.

C. A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the Compact and rules.

D. Member states may charge a fee for granting a compact privilege.

SECTION 4.

COMPACT PRIVILEGE

A. To exercise the compact privilege under the terms and provisions of the Compact, the licensee shall:

1. Hold a license in the home state;
2. Have no encumbrance on any state license;
3. Be eligible for a compact privilege in any member state in accordance with Section 4.D, G and H;
4. Have not had any adverse action against any license or compact privilege within the previous two (2) years;
5. Notify the Commission that the licensee is seeking the compact privilege within a remote state(s);

6. Pay any applicable fees, including any state fee, for the compact privilege;

7. Meet any jurisprudence requirements established by the remote state(s) in which the licensee is seeking a compact privilege; and

8. Report to the Commission adverse action taken by any nonmember state within thirty (30) days from the date the adverse action is taken.

B. The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of Section 4.A to maintain the compact privilege in the remote state.

C. A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

D. A licensee providing physical therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

E. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

1. The home state license is no longer encumbered; and

2. Two (2) years have elapsed from the date of the adverse action.

F. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of Section 4.A to obtain a compact privilege in any remote state.

G. If a licensee's compact privilege in any remote state is removed, the individual shall lose the compact privilege in any remote state until the following occur:

1. The specific period of time for which the compact privilege was removed has ended;

2. All fines have been paid; and

3. Two (2) years have elapsed from the date of the adverse action.

H. Once the requirements of Section 4.G have been met, the licensee must meet the requirements in Section 4.A to obtain a compact privilege in a remote state.

SECTION 5.

ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one (1) of the following as the home state:

A. Home of record;

B. Permanent Change of Station (PCS); or

C. State of current residence if it is different than the PCS state or home of record.

SECTION 6.

ADVERSE ACTIONS

A. A home state shall have exclusive power to impose adverse action against a license issued by the home state.

B. A home state may take adverse action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing adverse action.

C. Nothing in this Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the member state's laws. Member states must require licensees who enter any alternative programs in lieu of discipline to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

D. Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

E. A remote state shall have the authority to:

1. Take adverse actions as set forth in Section 4.D against a licensee's compact privilege in the state;

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and

3. If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

F. Joint Investigations.

1. In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

SECTION 7.

ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION

A. The Compact member states hereby create and establish a joint public agency known as the Physical Therapy Compact Commission:

1. The Commission is an instrumentality of the Compact states.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings.

1. Each member state shall have and be limited to one (1) delegate selected by that member state's licensing board.

2. The delegate shall be a current member of the licensing board, who is a physical therapist, physical therapist assistant, public member, or the board administrator.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The member state board shall fill any vacancy occurring in the Commission.

5. Each delegate shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

C. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;

2. Establish bylaws;

3. Maintain its financial records in accordance with the bylaws;

4. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;

5. Promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all member states;

6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state physical therapy

licensing board to sue or be sued under applicable law shall not be affected;

7. Purchase and maintain insurance and bonds;

8. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;

11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

13. Establish a budget and make expenditures;

14. Borrow money;

15. Appoint committees, including standing committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

16. Provide and receive information from, and cooperate with, law enforcement agencies;

17. Establish and elect an Executive Board; and

18. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of physical therapy licensure and practice.

D. The Executive Board.

The Executive Board shall have the power to act on behalf of the Commission according to the terms of this Compact.

1. The Executive Board shall be comprised of nine (9) members:

   a. Seven (7) voting members who are elected by the Commission from the current membership of the Commission;

   b. One (1) ex-officio, nonvoting member from the recognized national physical therapy professional association; and

   c. One (1) ex-officio, nonvoting member from the recognized membership organization of the physical therapy licensing boards.

2. The ex-officio members will be selected by their respective organizations.

3. The Commission may remove any member of the Executive Board as provided in bylaws.

4. The Executive Board shall meet at least annually.

5. The Executive Board shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the rules or bylaws, changes to this Compact legislation, fees paid by Compact member states such as annual dues, and any commission Compact fee charged to licensees for the compact privilege;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in rules or bylaws.

E. Meetings of the Commission.

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Section 9.

2. The Commission or the Executive Board or other committees of the Commission may convene in a closed, nonpublic meeting if the Commission or Executive Board or other committees of the Commission must discuss:

a. Noncompliance of a member state with its obligations under the Compact;

b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal or member state statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the

meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

F. Financing of the Commission.

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification.

1. The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any

damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 8.

DATA SYSTEM

A. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this Compact is applicable as required by the rules of the Commission, including:

1. Identifying information;
2. Licensure data;
3. Adverse actions against a license or compact privilege;
4. Nonconfidential information related to alternative program participation;
5. Any denial of application for licensure, and the reason(s) for such denial; and
6. Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.

C. Investigative information pertaining to a licensee in any member state will only be available to other party states.

D. The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

E. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

SECTION 9.

RULEMAKING

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four (4) years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least thirty (30) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform; and
2. On the website of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

E. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
2. The text of the proposed rule or amendment and the reason for the proposed rule;
3. A request for comments on the proposed rule from any interested person; and
4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five (25) persons;
2. A state or federal governmental subdivision or agency; or
3. An association having at least twenty-five (25) members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.
2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.
3. All hearings will be recorded. A copy of the recording will be made available on request.
4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

J. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

K. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;
2. Prevent a loss of Commission or member state funds;
3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

SECTION 10.

OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight.

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

B. Default, Technical Assistance, and Termination.

1. If the Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

a. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the

governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution.

1. Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and nonmember states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement.

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

SECTION 11.

DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any member state may withdraw from this Compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.
2. Withdrawal shall not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with the investigative and adverse action reporting requirements of this Compact prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

SECTION 12.

CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any party state, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

SOURCES: Laws, 2017, ch. 326, § 1, eff from and after July 1, 2017.

Editor's Note — For more information about the Physical Therapy Licensure Compact, see www.fsbpt.org.

Comparable Laws from other States — Arizona: A.R.S. § 32-2053.
Montana: 37-11-_, MCA (added by Sec. 1, Ch. 36, L. 2017).
Oregon: ORS § _.001 [2016 c.13 § 1(1)] through ORS § _.013 [2016 c.13 § 2].
Tennessee: Tenn. Code Ann. § 63-13-401.
Washington: Rev. Code Wash. (ARCW) § 18.74._(added by 2017 c 108 § 1)

CHAPTER 24

Mississippi Occupational Therapy Practice Act

Sec.	
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73-24-29.	Fees [Repealed effective July 1, 2020].

§ 73-24-1. Title.

This chapter shall be known as the "Mississippi Occupational Therapy Practice Act."

SOURCES: Laws, 1988, ch. 451, § 1, eff from and after July 1, 1988.

§ 73-24-3. Definitions.

The following words and phrases shall have the following meanings, unless the context requires otherwise:

(a) "Association" shall mean the Mississippi Occupational Therapy Association.

(b) "Board" shall mean the Mississippi State Board of Health.

(c) "Occupational therapy" means the therapeutic use of purposeful and meaningful (goal-directed) activities and/or exercises to evaluate and treat an individual who has, or is at risk for, a disease or disorder, impairment, activity limitation or participation restriction which interferes with his ability to function independently in daily life roles and to promote health and wellness across his lifespan.

(d) "Occupational therapy intervention" includes:

(i) Remediation or restoration of performance abilities that are limited due to impairment in biological, physiological, psychological or neurological processes;

(ii) Adaptation of task, process or the environment, or the teaching of compensatory techniques in order to enhance functional performance;

(iii) Disability prevention methods and techniques which facilitate the development or safe application of functional performance skills; or

(iv) Health promotion strategies and practices which enhance functional performance abilities.

(e) "Occupational therapy service" includes, but is not limited to:

(i) Evaluating, developing, improving, sustaining or restoring skill in activities of daily living (ADLS), work or productive activities, including instrumental activities of daily living (IADLS), play and leisure activities;

(ii) Evaluating, developing, remediating or restoring physical, sensorimotor, cognitive or psychosocial components of performance;

(iii) Designing, fabricating, applying or training in the use of assistive technology or orthotic devices, and training in the use of prosthetic devices;

(iv) Adaptation of environments and processes, including the application of ergonomic principles, to enhance functional performance and safety in daily life roles;

(v) Application of physical agent modalities as an adjunct to or in preparation for engagement in an occupation or functional activity;

(vi) Evaluating and providing intervention in collaboration with the client, family, caregiver or other person responsible for the client;

(vii) Educating the client, family, caregiver or others in carrying out appropriate nonskilled interventions;

(viii) Consulting with groups, programs, organizations or communities to provide population-based services; or

(ix) Participation in administration, education and research, including both clinical and academic environments.

(f) "Occupational therapist" means a person licensed to practice occupational therapy as defined in this chapter, and whose license is in good standing.

(g) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the supervision of or with the consultation of the licensed occupational therapist, and whose license is in good standing.

(h) "Occupational therapy aide" means a person not licensed in the field of occupational therapy who assists occupational therapists and occupational therapy assistants in the practice of occupational therapy, is under the direct supervision of the licensed occupational therapist or licensed occupational therapy assistant, and whose activities require an understanding of occupational therapy.

(i) "Person" means any individual, partnership, unincorporated organization or corporate body, except that only an individual may be licensed under this chapter.

(j) "Council" means the Mississippi Advisory Council in Occupational Therapy.

SOURCES: Laws, 1988, ch. 451, § 2; Laws, 2001, ch. 424, § 1, eff from and after July 1, 2001.

§ 73-24-5. State Board of Health to discharge provisions of chapter.

The State Board of Health established and empowered by Section 41-3-1 et seq., Mississippi Code of 1972, shall discharge the provisions of this chapter in the examination, licensing and regulation of persons who provide services of occupational therapy.

SOURCES: Laws, 1988, ch. 451, § 3, eff from and after July 1, 1988.

Editor's Note — Section 41-3-1, referred to in this section, was repealed by § 1, ch. 514, Laws of 2007, effective March 30, 2007.

§ 73-24-7. License required to use title of occupational therapist or similar titles; making of material false statement in application; penalties.

(1) It is unlawful for any person who is not licensed under this chapter as an occupational therapist or as an occupational therapy assistant, or whose license has been suspended or revoked, to:

(a) In any manner represent himself as someone who provides occupational therapy services, or use in connection with his name or place of business the words "occupational therapist," "licensed occupational therapy assistant" or the letters "O.T.," "L.O.T.," "O.T.L.," "O.T.A." or "O.T.A.L." or any other words, letters, abbreviations or insignia indicating or implying that he is an occupational therapist or an occupational therapy assistant or that he provides occupational therapy services; or

(b) To show in any way, orally, in writing, in print or by sign, directly or by implication, or to represent himself as an occupational therapist or an occupational therapy assistant or someone who provides occupational therapy services.

(2) Any person who violates any provision of this section, upon conviction, shall be guilty of a misdemeanor and shall be fined not more than One Thousand Dollars ($1,000.00) for each violation.

(3) Any person who knowingly shall make a material false statement in his application for license under this chapter or in response to any inquiry by the department or the board shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or imprisoned for not

less than ten (10) days nor more than sixty (60) days, or both such fine and imprisonment.

SOURCES: Laws, 1988, ch. 451, § 4; Laws, 2001, ch. 424, § 2, eff from and after July 1, 2001.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 73-24-9. Application of chapter; exceptions.

Nothing in this chapter shall be construed as preventing or restricting the practice, services or activities of:

(a) Any person, licensed in this state by any other law, from engaging in the profession or occupation for which he or she is licensed;

(b) Any person who is employed as an occupational therapist or occupational therapy assistant by the United States Armed Services, the United States Public Health Service, the Veteran's Administration or other federal agencies, if such person provides occupational therapy solely under the direction or control of the organization by which he is employed;

(c) Any person pursuing a course of study leading to a degree or certificate in occupational therapy in an accredited, recognized or approved educational program, or advanced training in a specialty area, if such activities and services constitute a part of the supervised course of study, and if such person is designated by a title which clearly indicates his status as a trainee or student;

(d) Any person fulfilling the supervised fieldwork experience requirements of Section 73-24-19, if such activities and services constitute a part of the experience necessary to meet the requirements of that section;

(e) Any person employed as an occupational therapy aide or who works under the supervision of a licensed occupational therapist;

(f) Any person performing occupational therapy services in the state, if these services are performed for no more than thirty (30) days in a calendar year under the supervision of an occupational therapist licensed under this chapter, if:

(i) The person is licensed under the law of another state which has licensure requirements at least as stringent as the requirements of this chapter, or

(ii) The person is certified as an Occupational Therapist Registered (OTR) or a Certified Occupational Therapy Assistant (COTA), established by the National Board for Certification in Occupational Therapy, Inc. (NBCOT), or its successor organization; or

(g) Any person certified by the American Board of Certification in Orthotics and Prosthetics as a Certified Orthotist, C.O., Certified Prosthetist, C.P., Certified Prosthetist/Orthotist, C.P.O., or anyone working under their direct supervision.

SOURCES: Laws, 1988, ch. 451, § 5; Laws, 1997, ch. 517, § 1; Laws, 2001, ch. 424, § 3, eff from and after July 1, 2001.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in (e) and (f)(ii). The word "or" was deleted from the end of (e) and added to the end of (f)(ii). The Joint Committee ratified the correction at its May 16, 2002 meeting.

Cross References — Certification to practice orthotics or prosthetics, see §§ 73-22-1 et seq.

§ 73-24-11. Advisory Council in Occupational Therapy.

(1) There is hereby established the Mississippi Advisory Council in Occupational Therapy under the jurisdiction of the State Board of Health.

(2) The council shall consist of five (5) members appointed by the board, four (4) of whom shall be appointed from a list of names submitted by the Mississippi Occupational Therapy Association, all of whom shall be residents of this state. The persons appointed from the list submitted by the association shall have been engaged in rendering occupational therapy services to the public, teaching or research in occupational therapy at least four (4) years immediately preceding their appointment. At least three (3) members shall be occupational therapists and one (1) member shall be either an occupational therapist or an occupational therapy assistant. These members shall at all times be holders of valid licenses for the practice of occupational therapy in this state, except for the members of the first council, who shall fulfill licensure requirements of this chapter. The remaining member shall be a member of another health profession or member of the public with an interest in the rights of the consumers of health services.

(3) Appointments made thereafter shall be for terms of three (3) years, with no person being eligible to serve more than two (2) full consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members, who shall serve through the last calendar day of the year in which they are appointed before commencing the term prescribed by this section.

(4) In the event of a vacancy in one (1) of the positions the association may recommend, as soon as practical, at least two (2) and not more than three (3) persons to fill that vacancy. The board shall appoint, as soon as practical, one (1) of these persons who shall fill the unexpired term. If the association does not provide a recommendation, the board shall appoint a person to the unexpired term.

(5) The council shall meet during the first month of each calendar year to select a chairperson and for other appropriate reasons. Further meetings may be convened at the call of the chairperson, or the written request of any two (2) members of the council. Three (3) members of the council shall constitute a quorum for all purposes. All meetings of the council shall be open to the public, except that the council may hold executive sessions under the Mississippi Open Meetings Law, Section 25-41-1 et seq., Mississippi Code of 1972.

SOURCES: Laws, 1988, ch. 451, § 6; Laws, 2001, ch. 424, § 4, eff from and after July 1, 2001.

§ 73-24-13. Duties and powers of State Board of Health.

(1) The board shall administer, coordinate and enforce the provisions of this chapter, evaluate the qualifications, and approve the examinations for licensure under this chapter, and may issue subpoenas, examine witnesses and administer oaths.

(2) The board shall adopt such rules and regulations, not inconsistent with the laws of this state, as may be necessary to effectuate the provisions of this chapter, the practice of occupational therapy in this state, and may amend or repeal the same as may be necessary for such purposes, with the advice of the council. Such rules and regulations shall be adopted in accordance with the provisions of Section 25-43-1 et seq., Mississippi Code of 1972.

(3) The board shall conduct hearings and keep such records and minutes as are necessary to carry out its functions. It shall provide reasonable public notice to the appropriate persons as to the time and place of all hearings authorized under this chapter in such a manner and at such times as it may determine by the board's rules and regulations.

(4) The board shall investigate alleged or suspected violations of the provisions of this chapter or other laws of this state pertaining to occupational therapy and any rules and regulations adopted by the board; for this purpose, any authorized agents of the department shall have the power and right to enter and make reasonable inspections of any place where occupational therapy is practiced, and may inspect and/or copy any records pertaining to clients or the practice of occupational therapy under this chapter.

(5) The conferral or enumeration of specific powers elsewhere in this chapter shall be construed as a limitation of the general functions by this section.

SOURCES: Laws, 1988, ch. 451, § 7; Laws, 2001, ch. 424, § 5, eff from and after July 1, 2001.

Editor's Note — Pursuant to § 25-43-1.101(3), any reference in this section to § 25-43-1 et seq. shall be deemed to mean and refer to § 25-43-1.101 et seq.

Cross References — Requirement that the board publish the rules and regulations adopted under authority of this section within 60 days, see § 73-24-17.

The additional power of the board to prescribe and publish fees commensurate with the cost of fulfilling the requirements of this chapter, see § 73-24-29.

§ 73-24-15. Financing of administration of chapter; accounting of funds; reimbursement of expenses of members of council.

(1) The administration of the provisions of this chapter shall be financed from income accruing from fees, licenses and charges assessed and collected by the board and from such other funds available to the board. In addition, the board shall receive and account for all funds received and shall keep such

funds in a separate fund which is hereby created within the State Treasury. Funds collected under the provisions of this chapter shall be used solely for the expenses incurred in the administration of the provisions of this chapter, which may include full or partial financing of continuing professional education programs promulgated by the council under Section 73-24-29. Such funds shall be subject to audit by the State Auditor.

(2) Members of the council shall receive no compensation for their services, but shall be reimbursed for their expenses actually incurred in the execution of their powers and duties, including mileage, as provided in Section 25-3-41, Mississippi Code of 1972.

SOURCES: Laws, 1988, ch. 451, § 8, eff from and after July 1, 1988.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Additional power of the board to prescribe and publish fees commensurate with the cost of fulfilling the requirements of this chapter, see § 73-24-29.

§ 73-24-17. Board to issue licenses and notices; board to publish license standards and rules and regulations.

(1) The board shall issue licenses and notices of renewal, revocation, suspension or reinstatement, and shall publish annually the names of persons licensed under this chapter and the names of the persons whose licenses have been subjected to disciplinary action under this chapter.

(2) The board shall publish and disseminate to all licensees, in an appropriate manner, the license standards prescribed by this chapter, any amendments thereto, and such rules and regulations as the board may adopt under the authority of Section 73-24-13 within sixty (60) days of their adoption.

SOURCES: Laws, 1988, ch. 451, § 9; Laws, 2001, ch. 424, § 6, eff from and after July 1, 2001.

§ 73-24-19. Licensing requirements; examinations.

(1) An applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file a written application on forms provided by the board, showing to the satisfaction of the board that he meets the following requirements:

(a) Is of good moral character;

(b) Has been awarded a degree from an education program in occupational therapy recognized by the board, with a concentration of instruction in basic human sciences, the human development process, occupational tasks and activities, the health-illness-health continuum, and occupational therapy theory and practice:

(i) For an occupational therapist, such program shall be accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association or the board-recognized accrediting body;

(ii) For an occupational therapy assistant, such a program shall be accredited by the Accreditation Council for Occupational Therapy Education of the American Occupational Therapy Association or the board-recognized accrediting body;

(c) Has successfully completed a period of supervised fieldwork experience at a recognized educational institution or a training program approved by the educational institution where he or she met the academic requirements:

(i) For an occupational therapist, the required supervised fieldwork experience shall meet current national standards that are published annually by the board;

(ii) For an occupational therapy assistant, the required supervised fieldwork experience shall meet national standards that are published annually by the board.

(2) The board shall approve an examination for occupational therapists and an examination for occupational therapy assistants that will be used as the examination for licensure.

(3) Any person applying for licensure shall, in addition to demonstrating his eligibility in accordance with the requirements of this section, make application to the board for review of proof of his eligibility for certification by the National Board for Certification in Occupational Therapy, Inc. (NBCOT), or its successor organization, on a form and in such a manner as the board shall prescribe. The application shall be accompanied by the fee fixed in accordance with the provisions of Section 73-24-29. The board shall establish standards for acceptable performance on the examination. A person who fails an examination may apply for reexamination upon payment of the prescribed fee.

(4) Applicants for licensure shall be examined at a time and place and under such supervision as the board may require. The board shall give reasonable public notice of these examinations in accordance with its rules and regulations.

(5) An applicant may be licensed as an occupational therapist if he or she: (a) has practiced as an occupational therapy assistant for four (4) years, (b) has completed the requirements of a period of six (6) months of supervised fieldwork experience at a recognized educational institution or a training program approved by a recognized accredited educational institution before January 1, 1988, and (c) has passed the examination for occupational therapists.

(6) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Laws, 1988, ch. 451, § 10; Laws, 1997, ch. 517, § 2; Laws, 1997, ch. 588, § 51; Laws, 2001, ch. 424, § 7, eff from and after July 1, 2001.

Joint Legislative Committee Note — Section 2 of ch. 517, Laws of 1997, amended this section, effective July 1, 1997 (approved April 10, 1997). Section 51 of ch. 588, Laws of 1997, effective July 1, 1997 (approved April 24, 1997), also amended this section. As set out above, this section reflects the language of Section 51 of ch. 588, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Authorization for a person to fulfill the fieldwork experience requirements of this section in conformity with this chapter, see § 73-24-9.

Applicability of this section to the licensing of foreign trained persons, see § 73-24-21.

The application of this section to the waiver of licensing requirements for persons demonstrating proof of actual practice in the field of occupational therapy, see § 73-24-21.

§ 73-24-21. Grant of license to persons registered or certified by American Occupational Therapy Association; waiver of licensing requirements; persons licensed in another state; foreign trained persons.

(1) The board shall grant a license to any person certified prior to July 1, 1988, as an Occupational Therapist Registered (OTR) or a Certified Occupational Therapy Assistant (COTA) by the American Occupational Therapy Association (AOTA). The board may waive the examination, education or experience requirements and grant a license to any person certified by AOTA after July 1, 1988, if the board determines the requirements for such certification are equivalent to the requirements for licensure in this chapter.

(2) The board may waive the examination, education or experience requirements and grant a license to any applicant who shall present proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia or territory of the United States which requires standards for licensure considered by the board to be equivalent to the requirements for licensure of this chapter. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(3) Foreign trained occupational therapists and occupational therapy assistants shall satisfy the examination requirements of Section 73-24-19. The board shall require foreign trained applicants to furnish proof of good moral character and completion of educational and supervised fieldwork requirements substantially equal to those contained in Section 73-24-19 before taking the examination.

SOURCES: Laws, 1988, ch. 451, § 11; Laws, 2001, ch. 424, § 8; Laws, 2013, ch. 350, § 24, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected publishing errors in (1). The words "the effective date of this chapter" were changed to "July 1, 1988" in the first and second sentences. The Joint Committee ratified the corrections at its May 16, 2002, meeting.

Cross References — Renewal of license, see § 73-24-27.

Comparable Laws from other States — Alabama: Code of Ala. § 34-39-10.
Arkansas: A.C.A. § 17-88-305.
Florida: Fla. Stat. § 468.213.
Georgia: O.C.G.A. § 43-28-11.
Louisiana: La. R.S. § 37:3008.
North Carolina: N.C. Gen. Stat. § 90-270.72.
South Carolina: S.C. Code Ann. § 40-36-250.
Tennessee: Tenn. Code Ann. § 63-13-213.

§ 73-24-23. Issuance of license or limited permit; right of licensee to use certain titles.

(1) The board shall issue a license to any person who meets the requirements of this chapter and upon payment of the license fee.

(2) The board shall issue a limited permit to persons who have completed the education and experience requirements of this chapter upon payment of the limited permit fee. This permit shall allow the person to practice occupational therapy or assist in the practice of occupational therapy, as the case may be, under the supervision of an occupational therapist who holds a current license in this state and shall be valid until the date on which the results of the next qualifying examination have been made public. The limited permit can be renewed one (1) time if the applicant has failed the examination.

(3) Any person who is issued a license as an occupational therapist under this chapter may use the words "licensed occupational therapist," "occupational therapist licensed," "occupational therapist," or he may use the letters "L.O.T.," "O.T.L." or "O.T." in connection with his or her name or place of business to denote licensure under this chapter.

(4) Any person who is issued a license as an occupational therapy assistant under this chapter may use the words "occupational therapy assistant," "licensed occupational therapy assistant" or "occupational therapy assistant licensed," or may use the letters "O.T.A.," "L.O.T.A." or "O.T.A.L.," in connection with his name or place of business to denote licensure under this chapter.

SOURCES: Laws, 1988, ch. 451, § 12; Laws, 1997, ch. 517, § 3; Laws, 2001, ch. 424, § 9, eff from and after July 1, 2001.

Cross References — Grant of license to persons registered or certified by American Occupational Therapy Association, see § 73-24-21.
Grounds for disciplinary action against licensees, see § 73-24-24.
License renewal, see § 73-24-27.
Fees, see § 73-24-29.

§ 73-24-24. Grounds for disciplinary action against licensees; submission to physical or mental examination.

(1) Licensees subject to this chapter shall conduct their activities, services and practice in accordance with this chapter and any rules promulgated pursuant hereto. Licenses may be subject to the exercise of the disciplinary sanction enumerated in Section 73-24-25 if the board finds that a licensee is guilty of any of the following:

(a) Negligence in the practice or performance of professional services or activities;

(b) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public in the course of professional services or activities;

(c) Perpetrating or cooperating in fraud or material deception in obtaining or renewing a license or attempting the same;

(d) Being convicted of any crime which has a substantial relationship to the licensee's activities and services or an essential element of which is misstatement, fraud or dishonesty;

(e) Being convicted of any crime which is a felony under the laws of this state or the United States;

(f) Engaging in or permitting the performance of unacceptable services personally or by others working under the licensee's supervision due to the licensee's deliberate or negligent act or acts or failure to act, regardless of whether actual damage or damages to the public is established;

(g) Continued practice although the licensee has become unfit to practice as an occupational therapist or occupational therapist assistant due to: (i) failure to keep abreast of current professional theory or practice; or (ii) physical or mental disability; the entry of an order or judgment by a court of competent jurisdiction that a licensee is in need of mental treatment or is incompetent shall constitute mental disability; or (iii) addiction or severe dependency upon alcohol or other drugs which may endanger the public by impairing the licensee's ability to practice;

(h) Having disciplinary action taken against the licensee's license in another state;

(i) Making differential, detrimental treatment against any person because of race, color, creed, sex, religion or national origin;

(j) Engaging in lewd conduct in connection with professional services or activities;

(k) Engaging in false or misleading advertising;

(*l*) Contracting, assisting or permitting unlicensed persons to perform services for which a license is required under this chapter;

(m) Violation of any probation requirements placed on a license by the board;

(n) Revealing confidential information except as may be required by law;

(o) Failing to inform clients of the fact that the client no longer needs the services or professional assistance of the licensee;

(p) Charging excessive or unreasonable fees or engaging in unreasonable collection practices;

(q) For treating or attempting to treat ailments or other health conditions of human beings other than by occupational therapy as authorized by this chapter;

(r) For practice or activities considered to be unprofessional conduct as defined by the rules and regulations;

(s) Violations of the current codes of conduct for occupational therapists and occupational therapy assistants adopted by the American Occupational Therapy Association;

(t) Violations of any rules or regulations promulgated pursuant to this chapter.

(2) The board may order a licensee to submit to a reasonable physical or mental examination if the licensee's physical or mental capacity to practice safely is at issue in a disciplinary proceeding.

(3) Failure to comply with a board order to submit to a physical or mental examination shall render a licensee subject to the summary suspension procedures described in Section 73-24-25.

SOURCES: Laws, 2001, ch. 424, § 10, eff from and after July 1, 2001.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, The Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1)(g). The words "addition or severe dependency upon alcohol" were changed to "addiction or severe dependency upon alcohol." The Joint Committee ratified the correction at its June 3, 2003, meeting.

§ 73-24-25. Notice and hearing; complaints; formal charges; appeals; sanctions; summary license suspension; consent order; license reinstatement; license suspension for failure to comply with order of support.

(1) Any person whose application for a license is denied shall be entitled to a hearing before the board if he submits a written request to the board. Such hearing shall be conducted at the earliest possible date. A subcommittee of the council shall attend and may offer relevant evidence at any such hearing. The board shall fix a time and place for the hearing and shall cause a written copy of the reason for denial of the license, together with a notice of the time and place fixed for the hearing, to be served on the applicant requesting the hearing and shall serve notice of such hearing on the council. Service of and notice of the hearing may be given by United States certified mail, return receipt requested, to the last known address of the licensee or applicant. For purposes of the hearing, the board, acting by and through the Executive Director of the State Board of Health, shall have the power to subpoena persons and compel the production of records, papers and other documents.

(2)(a) All complaints concerning a licensee's business or professional practice shall be received by the board. Each complaint received shall be registered, recording at a minimum the following information: (i) licensee's name; (ii) name of the complaining party, if known; (iii) date of complaint; (iv) brief statement of complaint; and (v) disposition.

(b) Following the investigative process, the board may file formal charges against the licensee. Such formal complaint, at a minimum, shall inform the licensee of the facts which are the basis of the charge and which are specific enough to enable the licensee to defend against the charges.

(c) Each licensee whose conduct is the subject of a formal charge which seeks to impose disciplinary action against the licensee shall be served notice of the formal charge at least thirty (30) days before the date of the hearing, which hearing shall be presided over by the board or the board's designee. Service shall be considered to have been given if the notice was personally received by the licensee or if the notice was sent by United States certified mail, return receipt requested, to the licensee at the licensee's last known address as listed with the state agency.

(d) The notice of the formal charge shall consist, at a minimum, of the following information:

(i) The time, place and date of the hearing;

(ii) Notification that the licensee shall appear personally at the hearing and may be represented by counsel;

(iii) Notification that the licensee shall have the right to produce witnesses and evidence in his behalf and shall have the right to cross-examine adverse witnesses and evidence;

(iv) Notification that the hearing could result in disciplinary action being taken against the licensee;

(v) Notification that rules for the conduct of the hearing exist, and it may be in the licensee's best interest to obtain a copy;

(vi) Notification that the board or its designee shall preside at the hearing, and following the conclusion of the hearing, shall make findings of facts, conclusions of law and recommendations, separately stated, to the board as to what disciplinary action, if any, should be imposed on the licensee;

(vii) The board or its designee shall hear evidence produced in support of the formal charges and contrary evidence produced by the licensee. At the conclusion of the hearing, the board shall issue an order; and

(viii) All proceedings under this section are matters of public record and shall be preserved in accordance with state law.

(3) In addition to other remedies provided by law or in equity, any applicant or licensee aggrieved by any action of the board may appeal the action of the board to the chancery court of the county of his residence if he be a resident of this state, or to the Chancery Court of the First Judicial District of Hinds County, Mississippi, if he be a nonresident of this state. An appeal shall be filed within thirty (30) days immediately following the mailing or delivery to the applicant or licensee of a copy of the order of judgment of the board, unless the court, for good cause shown, extends the time. The court after a hearing may modify, affirm or reverse the judgment of the board or may

remand the case to the board for further proceedings. An appeal from the chancery court may be had to the Supreme Court of the State of Mississippi as provided by law for any final judgment of the chancery court. If the board appeals a judgment of the chancery court, no bond shall be required of it in order to perfect its appeal.

(4) The board may impose any of the following sanctions, singly or in combination, when it finds that a licensee is guilty of any such offense:

(a) Revoke the license;

(b) Suspend the license, for any period of time;

(c) Censure the licensee;

(d) Impose a monetary penalty of not more than Two Hundred Dollars ($200.00);

(e) Place a licensee on probationary status and requiring the licensee to submit to any of the following: (i) report regularly to the board, or its designee, upon matters which are the basis of probation; (ii) continue to renew professional education until a satisfactory degree of skill has been attained in those areas which are the basis of probation; or (iii) such other reasonable requirement or restrictions as the board deems proper;

(f) Refuse to renew a license; or

(g) Revoke probation which has been granted and impose any other disciplinary action under this subsection when the requirements of probation have not been fulfilled or have been violated.

(5) The board summarily may suspend a license under this chapter without the filing of a formal complaint, notice or a hearing, if the board finds that the continued practice in the profession by the licensee would constitute an immediate danger to the public. If the board summarily suspends a license under the provisions of this subsection a hearing must be held within twenty (20) days after suspension begins, unless the hearing date is continued at the request of the licensee.

(6) Disposition of any formal complaint may be made by consent order or stipulation between the board and the licensee.

(7) The board may reinstate any licensee to good standing under this chapter if, after hearing, the board is satisfied that the applicant's renewed practice is in the public interest.

(8) The board may seek the counsel of the Occupational Therapy Advisory Council regarding disciplinary actions.

(9) The board shall seek to achieve consistency in the application of the foregoing sanctions, and significant departure from prior decisions involving similar conduct shall be explained by the board.

(10) In addition, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may

be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1988, ch. 451, § 13; Laws, 1996, ch. 507, § 54; Laws, 2001, ch. 424, § 11, eff from and after July 1, 2001.

Cross References — Requirements for renewal and reinstatement of suspended or revoked licenses, see § 73-24-27.

Additional power of the board to prescribe and publish fees commensurate with the cost of fulfilling the requirements of this chapter, see § 73-24-29.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 et seq.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — Attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

§ 73-24-27. License renewal; late renewal; inactive status; renewal of suspended license; reinstated license subject to renewal requirements.

(1) Except as provided in Section 33-1-39, any license issued under this chapter shall be subject to renewal and shall expire unless renewed in the manner prescribed by the rules and regulations of the board, upon the payment of a renewal fee and demonstration of completion of continuing professional education. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules and regulations, but no late renewal of a license may be granted more than two (2) years after its expiration.

(2) Upon request and payment of the license fee required, the board shall grant inactive status to a licensee who: (a) does not practice as an occupational therapist or an occupational therapy assistant, (b) does not hold himself or herself out as an occupational therapist or an occupational therapy assistant, and (c) does not maintain any continuing education requirements.

(3) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal shall not entitle the suspended licensee to engage in the licensed activity or in any other conduct or activity in violation of the order of judgment by which the license was suspended. If a license revoked on disciplinary grounds is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and any late fee that may be applicable. The procedure for the reinstatement of a license that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

SOURCES: Laws, 1988, ch. 451, § 14; Laws, 1996, ch. 507, § 55; Laws, 1997, ch. 517, § 4; Laws, 2007, ch. 309, § 19, eff from and after passage (approved Mar. 8, 2007.)

Cross References — Fees, see § 73-24-29.

§ 73-24-29. Fees [Repealed effective July 1, 2020].

(1) The board is empowered to prescribe and publish reasonable fees for the following purposes:

(a) Application fee which is nonrefundable;
(b) Initial license fee;
(c) Renewal of license fee;
(d) Late renewal fee;
(e) Limited permit fee;
(f) Reinstatement of license fee;
(g) Inactive license fee.

(2) Such fees shall be commensurate to the extent feasible with the cost of fulfilling the duties of the board and council as defined by this chapter; however, no individual fee shall exceed One Hundred Fifty Dollars ($150.00).

(3) Any increase in the fees charged by the board under this section shall be in accordance with the provisions of Section 41-3-65.

SOURCES: Laws, 1988, ch. 451, § 15; Laws, 2016, ch. 510, § 50, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added (3).

Cross References — Use of funds collected under the provisions of this chapter to finance continuing professional education programs promulgated under this section, see § 73-24-15.

Requirement that licensing application be accompanied by the fee fixed in accordance with the provisions of this section, see § 73-24-19.

CHAPTER 25

Physicians

General Provisions 73-25-1
Disabled Physicians 73-25-51
Medical Discipline at Behest of Physician Members of State Board of Medical Licensure 73-25-81
Interstate Medical Licensure Compact 73-25-101

GENERAL PROVISIONS

Sec.

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73-25-31. Suspension or revocation of licenses; orders and judgments of board.
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73-25-33. Practice of medicine defined.
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use; immunity from civil liability for good faith use of auto-injectable epinephrine by trained school personnel.

73-25-38. Immunity from liability for physicians, physician assistants or certified nurse practitioners providing charitable medical care or voluntarily providing health services without fee while assisting with emergency management or operations in an emergency.

73-25-39. Books, blanks, and stationery.

§ 73-25-1. Duty to obtain license.

Every person who desires to practice medicine must first obtain a license to do so from the state board of medical licensure, but this section shall not apply to physicians now holding permanent license, the same having been recorded as required by law.

SOURCES: Codes, 1892, § 3243; 1906, § 3681; Hemingway's 1917, § 6367; 1930, § 5848; 1942, § 8878; Laws, 1980, ch. 458, § 5, eff from and after July 1, 1980.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

The exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Definition of "valid prescription," as it pertains to prescriptions for controlled substances, for the purposes of this chapter, see § 41-29-137.

Restrictions on performance of autopsies, see § 41-37-5.

Uniform health-care decisions act, see §§ 41-41-201 et seq.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Exemption of licensed physicians or surgeons from optometry laws, see § 73-19-29.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Practice of medicine defined, see § 73-25-33.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

Injunctions to restrain illegal practice of profession, see § 73-51-1.

Criminal offense of practicing as a physician or surgeon without having obtained license, see § 97-23-43.

JUDICIAL DECISIONS

1. In general.

Plaintiff who had been enjoined from continuing the unlicensed practice of osteopathic medicine has no statutory authority such as is vested in the State Board of Health to challenge the medical licenses of practicing physicians. United States ex rel. Hughes v. Cook, 498 F. Supp. 784 (S.D. Miss. 1980).

ATTORNEY GENERAL OPINIONS

The board of medical licensure may adopt regulations which set professional standards for physicians performing utilization review activities and provide for disciplinary action for physicians found to be in violation thereof. Morgan, Aug. 18, 2006, A.G. Op. 06-0324.

RESEARCH REFERENCES

ALR. Hypnotism as illegal practice of medicine. 85 A.L.R.2d 1128.

Malpractice in connection with electroshock treatment. 94 A.L.R.3d 317.

Malpractice: Physician's liability for injury or death resulting from side effects of drugs intentionally administered to or prescribed for patient. 47 A.L.R.5th 433.

Malpractice in diagnosis and treatment of male urinary tract and related organs. 48 A.L.R.5th 575.

Tort claim for negligent credentialing of physician. 98 A.L.R.5th 533.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 17 et seq.

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Forms 31, 38.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 11 et seq.

Practice References. Frankel and Zimmerly, Lawyers' Medical Cyclopedia, Fourth Edition (Matthew Bender).

Goldsmith, Medical Malpractice: Guide to Medical Issues (Matthew Bender).

Gray and Gordy, Attorneys' Textbook of Medicine, Third Edition (Matthew Bender).

Harney, Medical Malpractice, Fifth Edition (Michie).

Louisell and Williams, Medical Malpractice (Matthew Bender).

Health Care Law: A Practical Guide (Matthew Bender).

§ 73-25-3. How license obtained; criminal history records check and fingerprinting required; educational requirements.

Every person who desires to obtain a license to practice medicine must apply therefor, in writing, to the State Board of Medical Licensure at least ten (10) days before the date of the examination and must be examined by the board according to the methods deemed by it to be the most practical and expeditious to test the applicants' qualifications. If the applicant is found by the board, upon examination, to possess sufficient learning in those branches and to be of good moral character, the board shall issue him a license to practice medicine; however, no applicant shall be granted a license unless the applicant holds a diploma from a reputable medical college or college of osteopathic medicine that requires a four-year course of at least thirty-two (32) weeks for each session, or its equivalent.

To qualify for a Mississippi medical license, an applicant must have successfully been cleared for licensure through an investigation that shall consist of a determination as to good moral character and verification that the prospective licensee is not guilty of or in violation of any statutory ground for denial of licensure as set forth in Sections 73-25-29 and 73-25-83. To assist the board in conducting its licensure investigation, all applicants shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose.

Any and all state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

The board shall provide to the department the fingerprints of the applicant, any additional information that may be required by the department, and a form signed by the applicant consenting to the check of the criminal records and to the use of the fingerprints and other identifying information required by the state or national repositories.

The board shall charge and collect from the applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant.

This section shall not apply to applicants for a special volunteer medical license authorized under Section 73-25-18.

SOURCES: Codes, 1892, § 3244; 1906, § 3682; Hemingway's 1917, § 6382; 1930, § 5849; 1942, § 8879; Laws, 1918, ch. 132; Laws, 1973, ch. 307, § 1; Laws, 1980, ch. 458, § 6; Laws, 1995, ch. 332, § 2; Laws, 2007, ch. 506, § 1, eff from and after July 1, 2007.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

Criminal history record checks and fingerprinting for health care professional/vocational technical students, see § 37-29-232.

Criminal history record checks and fingerprinting required for new employees providing direct patient care at University of Mississippi Medical Center, see § 37-115-41.

General duties of state board of health, see § 41-3-15.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Criminal history record checks and fingerprinting required for applicants for physician assistant licensure, osteopathic licensure, and podiatric licensure, and on applicants for reinstatement of a license, see §§ 73-25-14, 73-25-32, 73-26-3, 73-27-5, and 73-27-12.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 48 et seq.

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Form 2.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 24-29.

§ 73-25-5. Application for license.

The application for license must include such information as the State Board of Medical Licensure shall require.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Codes, 1892, § 3245; 1906, § 3683; Hemingway's 1917, § 6368; 1930, § 5850; 1942, § 8880; Laws, 1973, ch. 307, § 2; Laws, 1980, ch. 458, § 7; Laws, 1997, ch. 588, § 52, eff from and after July 1, 1997.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

State board of medical licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 48 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 24-29.

§ 73-25-7. Examinations; when and where conducted.

The state board of medical licensure shall meet at the capitol at least once each year for the purpose of examining applicants for license to practice medicine or osteopathic medicine and shall continue in session until all applicants are examined.

SOURCES: Codes, 1892, § 3246; 1906, § 3684; Hemingway's 1917, § 6369; 1930, § 5851; 1942, § 8881; Laws, 1918, ch. 132; Laws, 1973, ch. 307, § 3; Laws, 1980, ch. 458, § 8, eff from and after July 1, 1980.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Fees for examination, see § 73-25-9.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Concurrent examinations for podiatrists, see § 73-27-7.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR. Discovery of hospital's internal records or communications as to qualifications or evaluations of individual physician. 81 A.L.R.3d 944.

Am Jur. 19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Form 2.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 24-29.

§ 73-25-9. Fees for examination.

Every person who shall apply for license to practice medicine shall, before he will be entitled to be examined, pay a fee to be set by the state board of medical licensure, not to exceed two hundred fifty dollars ($250.00).

In addition to fees for examination as provided for above, the state board of medical licensure is authorized to charge applicants an amount equivalent to the cost to the state board of medical licensure of purchasing and administering any national examinations approved by the federation of state medical boards.

SOURCES: Codes, 1892, § 3247; 1906, § 3685; Hemingway's 1917, § 6370; 1930, § 5852; 1942, § 8882; Laws, 1960, ch. 357; Laws, 1973, ch. 307, § 4; Laws, 1980, ch. 458, § 9, eff from and after July 1, 1980.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Issuance of special volunteer medical license to eligible physicians without payment of examination fee, see § 73-25-18.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

§ 73-25-11. Form of license.

A license to practice medicine shall be of such form and include such information as the state board of medical licensure may prescribe.

SOURCES: Codes, 1892, § 3248; 1906, § 3686; Hemingway's 1917, § 6371; 1930, § 5853; 1942, § 8883; Laws, 1973, ch. 307, § 5; Laws, 1980, ch. 458, § 10, eff from and after July 1, 1980.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR. Valuation of goodwill in medical or dental practice for purposes of divorce court's property distribution. 78 A.L.R.4th 853.

§ 73-25-13. Repealed.

Repealed by Laws, 2016, ch. 310, § 1, effective from and after passage (approved April 4, 2016).

§ 73-25-13. [Codes, 1892, § 3249; 1906, § 3687; Hemingway's 1917, § 6372; 1930, § 5854; 1942, § 8884; Laws, 1973, ch. 307, § 6; Laws, 1978, ch. 319, § 1, eff from and after passage (approved March 2, 1978).]

Editor's Note — Former § 73-25-13 required every person receiving a license to practice medicine file it in the office of the clerk of the circuit court of the county in which that person resides or practices within sixty days of the date it was issued.

§ 73-25-14. Annual renewal of license; requirements for reinstatement after lapse; criminal history records check and fingerprinting.

(1) Except as provided in Section 33-1-39, the license of every person licensed to practice medicine or osteopathy in the State of Mississippi shall be renewed annually.

On or before May 1 of each year, the State Board of Medical Licensure shall mail a notice of renewal of license to every physician or osteopath to whom a license was issued or renewed during the current licensing year. The notice shall provide instructions for obtaining and submitting applications for renewal. The State Board of Medical Licensure is authorized to make applications for renewal available via electronic means. The applicant shall obtain and complete the application and submit it to the board in the manner prescribed by the board in the notice before June 30 with the renewal fee of an amount established by the board, but not to exceed Three Hundred Dollars ($300.00), a portion of which fee shall be used to support a program to aid impaired physicians and osteopaths. The payment of the annual license renewal fee shall be optional with all physicians over the age of seventy (70) years. Upon receipt of the application and fee, the board shall verify the accuracy of the application and issue to applicant a certificate of renewal for the ensuing year, beginning July 1 and expiring June 30 of the succeeding calendar year. That renewal shall render the holder thereof a legal practitioner as stated on the renewal form.

(2) Any physician or osteopath practicing in Mississippi who allows his or her license to lapse by failing to renew the license as provided in subsection (1) may be reinstated by the board on satisfactory explanation for the failure to renew, by completion of a reinstatement form, and upon payment of the renewal fee for the current year, and shall be assessed a fine of Twenty-five Dollars ($25.00) plus an additional fine of Five Dollars ($5.00) for each month thereafter that the license renewal remains delinquent.

(3) Any physician or osteopath not practicing in Mississippi who allows his or her license to lapse by failing to renew the license as provided in subsection (1) may be reinstated by the board on satisfactory explanation for the failure to renew, by completion of a reinstatement form and upon payment of the arrearages for the previous five (5) years and the renewal fee for the current year.

(4) Any physician or osteopath who allows his or her license to lapse shall be notified by the board within thirty (30) days of that lapse.

(5) Any person practicing as a licensed physician or osteopath during the time his or her license has lapsed shall be considered an illegal practitioner and shall be subject to penalties provided for violation of the Medical Practice Act, if he or she had not submitted the required reinstatement form and fee within fifteen (15) days after notification by the board of the lapse.

(6) Any physician or osteopath practicing in the State of Mississippi whose license has lapsed and is deemed an illegal practitioner under subsection (5) of this section may petition the board for reinstatement of his or her license on a retroactive basis, if the physician or osteopath was unable to meet the June 30 deadline due to extraordinary or other legitimate reasons, and retroactive reinstatement of licensure shall be granted or may be denied by the board only for good cause. Failure to advise the board of change of address shall not be considered a basis of reinstatement.

(7) None of the fees or fines provided for in this section shall be applicable to the renewal of a special volunteer medical license authorized under Section 73-25-18.

(8) Fees collected under the provisions of this section shall be used by the board to defray expenses of administering the licensure provisions of the Medical Practice Act (Title 73, Chapter 25, Mississippi Code of 1972) and to support a program to aid impaired physicians and osteopaths in an amount determined by the board.

(9) In order for a physician or osteopath whose medical license has been expired for five (5) years or more to qualify for reinstatement of license, the

physician or osteopath must have successfully been cleared for reinstatement through an investigation that shall consist of a determination as to good moral character and verification that the prospective licensee is not guilty of or in violation of any statutory ground for denial of licensure as set forth in Sections 73-25-29 and 73-25-83. To assist the board in conducting its licensure investigation, all applicants shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose.

Any and all state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

The board shall provide to the department the fingerprints of the applicant, any additional information that may be required by the department, and a form signed by the applicant consenting to the check of the criminal records and to the use of the fingerprints and other identifying information required by the state or national repositories.

The board shall charge and collect from the applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant.

SOURCES: Laws, 1975, ch. 363; Laws, 1979, ch. 439, § 1; Laws, 1980, ch. 458, § 11; Laws, 1982, ch. 309, § 1; Laws, 1983, ch. 441, § 1; Laws, 1989, ch. 315, § 1; Laws, 1995, ch. 332, § 3; Laws, 1998, ch. 487, § 1; Laws, 2000, ch. 556, § 1; Laws, 2003, ch. 530, § 1; Laws, 2004, ch. 553, § 1; Laws, 2007, ch. 309, § 20; Laws, 2007, ch. 506, § 6; Laws, 2008, ch. 551, § 1, eff from and after July 1, 2008.

Joint Legislative Committee Note — Section 20 of ch. 309, Laws of 2007, effective upon passage (approved March 8, 2007), amended this section. Section 6 of ch. 506, Laws of 2007, effective July 1, 2007 (approved March 30, 2007), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the June 26, 2007, meeting of the Committee.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

Criminal history record checks and fingerprinting for health care professional/vocational technical students, see § 37-29-232.

Criminal history record checks and fingerprinting required for new employees providing direct patient care at University of Mississippi Medical Center, see § 37-115-41.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Practice of medicine deferred, see § 73-25-33.

Criminal history record checks and fingerprinting required for applicants for medical licensure, physician assistant licensure, osteopathic licensure, and podiatric licensure, and on applicants for reinstatement of a license, see §§ 73-25-3, 73-25-32, 73-26-3, 73-27-5, and 73-27-12.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

§ 73-25-15. Lost license may be supplied.

If a license to practice medicine be issued and be lost, or if the holder of a license fails to have the same recorded within sixty (60) days as required by law, the state board of medical licensure may, in its discretion, issue a new license.

SOURCES: Codes, 1892, § 3250; 1906, § 3688; Hemingway's 1917, § 6373; 1930, § 5855; 1942, § 8885; Laws, 1898, ch. 76; Laws, 1980, ch. 458, § 12, eff from and after July 1, 1980.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

§ 73-25-17. Temporary license.

(1) Except as otherwise provided in subsections (2) through (5) below, the executive officer of the state board of medical licensure may issue under his signature a temporary license to practice medicine which shall be valid until the next succeeding meeting of the board for examining applicants; and such license shall show the date of its issuance, otherwise it shall be void. Only one (1) temporary license shall ever be issued to the same person pursuant to this subsection, and it shall always be made to an individual and not to a partnership; provided, however, that the temporary license of a person enrolled in any American Medical Association-approved internship, residency or fellow-

ship program within the state, other than the fellowship program set forth in subsection (3) below, may be renewed annually for the duration of the internship, residency or fellowship program for a period not to exceed five (5) years.

(2) The state board of medical licensure may issue a temporary license to practice medicine at a youth camp licensed by the state board of health to nonresident physicians and retired resident physicians under the provisions of Section 75-74-8.

(3) The state board of medical licensure may issue a temporary license to practice medicine to physicians who have been admitted for treatment in a drug and/or alcohol treatment program approved by the board, or who are enrolled in the fellowship of addictionology in the Mississippi State Medical Association Impaired Professionals Program; provided that, if the applicant is a nonresident of the state said applicant shall hold a valid license to practice medicine in another state and the medical licensing authority of that state shall certify to the board of medical licensure in writing that such license is in good standing. A temporary license issued under this subsection shall be valid for a period of ninety (90) days but may be renewed every ninety (90) days for the duration of the fellowship or treatment program, provided that if the applicant discontinues treatment or leaves the fellowship program the temporary license shall automatically become null and void. The board may rescind or extend this temporary license for cause.

A temporary license issued to a physician under this subsection shall be limited to only the out-patient phase of the treatment program or that period of time necessary to complete the fellowship of addictionology and shall authorize that physician to whom the license is issued to administer treatment and care within the scope of the drug and/or alcohol treatment program or fellowship in an institutional setting and shall not authorize the physician to otherwise practice in this state. A physician licensed under this subsection shall not apply to the U.S. Drug Enforcement Administration for a controlled substances registration certificate and must be under the supervision of another physician holding a valid and permanent license in this state.

(4) A physician who has had his permanent license to practice in this state revoked or suspended by the board due to habitual personal use of intoxicating liquors or narcotic drugs, or any other drug having addiction-forming or addiction-sustaining liability, may be granted a temporary license pursuant to subsection (3) above, provided the issuance of such a temporary license is not in conflict with the prior disciplinary order of the board rendered against the physician.

(5) The applicant applying for a ninety-day temporary license to practice while in treatment in an approved drug and/or alcohol treatment program or while enrolled in the fellowship of addictionology shall pay a fee not to exceed fifty dollars ($50.00) to the board. No additional fee shall be charged for an extension.

SOURCES: Codes, 1892, § 3251; 1906, § 3689; Hemingway's 1917, § 6374; 1930, § 5856; 1942, § 8886; Laws, 1978, ch. 318, § 1; Laws, 1980, ch. 458, § 13; Laws, 1981, ch. 428, § 3; Laws, 1984, ch. 405, eff from and after July 1, 1984.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Applicability of this section to osteopaths, see § 73-25-25.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Conditions warranting restriction, suspension or revocation of license, see § 73-25-53.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

Executive officer of the state board of medical licensure, see § 73-43-13.

JUDICIAL DECISIONS

1. In general.

A physician who practices medicine in this state without a license cannot recover for professional services rendered a patient while so practicing even though prior thereto he had had a temporary license and was prevented by sickness from obtaining a permanent one. Bohn v. Lowry, 77 Miss. 424, 27 So. 604 (1900).

RESEARCH REFERENCES

ALR. Tort liability of medical society or professional association for failure to discipline or investigate negligent or otherwise incompetent medical practitioner. 72 A.L.R.4th 1148.

§ 73-25-18. Special volunteer medical license for physicians and physician assistants who are retired or on active duty in the Armed Forces of the United States or in the National Guard or a reserve component of the armed forces or are working as physicians or physician assistants for the Department of Veteran Affairs.

(1)(a) There is established a special volunteer medical license for physicians who are retired from active practice, or are currently serving on active duty in the Armed Forces of the United States or in the National Guard or a reserve component of the Armed Forces of the United States, or are working as physicians for the Department of Veterans Affairs, and wish to donate their expertise for the medical care and treatment of indigent and needy persons or persons in medically underserved areas of the state. The special volunteer medical license shall be issued by the State Board of Medical Licensure to eligible physicians without the payment of any application fee, examination fee, license fee or renewal fee, shall be issued for a fiscal year or part thereof, and shall be renewable annually upon approval of the board.

(b) A physician must meet the following requirements to be eligible for a special volunteer medical license:

(i) Completion of a special volunteer medical license application, including documentation of the physician's medical school or osteopathic school graduation and practice history;

(ii) Documentation that the physician has been previously issued an unrestricted license to practice medicine in Mississippi or in another state of the United States and that he or she has never been the subject of any medical disciplinary action in any jurisdiction;

(iii) Acknowledgement and documentation that the physician's practice under the special volunteer medical license will be exclusively and totally devoted to providing medical care to needy and indigent persons in Mississippi or persons in medically underserved areas in Mississippi; and

(iv) Acknowledgement and documentation that the physician will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any medical services rendered under the special volunteer medical license.

(2)(a) There is established a special volunteer license for physician assistants who are retired from active practice, or are currently serving on active duty in the Armed Forces of the United States or in the National Guard or a reserve component of the Armed Forces of the United States, or are working as physician assistants for the Department of Veterans Affairs, and wish to donate their expertise for the care and treatment of indigent and needy persons or persons in medically underserved areas of the state. The special volunteer physician assistant license shall be issued by the State Board of Medical Licensure to eligible physician assistants without the payment of any application fee, examination fee, license fee or renewal fee, shall be issued for a fiscal year or part thereof, and shall be renewable annually upon approval of the board.

(b) A physician assistant must meet the following requirements to be eligible for a special volunteer physician assistant license:

(i) Completion of an application for a special volunteer physician assistant license, including documentation of the physician assistant's educational qualifications and practice history;

(ii) Documentation that the physician assistant has been previously issued an unrestricted physician assistant license in Mississippi or in another state of the United States and that he or she has never been the subject of any disciplinary action in any jurisdiction;

(iii) Acknowledgement and documentation that the physician assistant's practice under the special volunteer physician assistant license will be exclusively and totally devoted to providing care to needy and indigent persons in Mississippi or persons in medically underserved areas in Mississippi; and

(iv) Acknowledgement and documentation that the physician assistant will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any services rendered under the special volunteer physician assistant license.

SOURCES: Laws, 1995, ch. 332, § 1; Laws, 2015, ch. 366, § 1, eff from and after July 1, 2015.

Cross References — Applicants for special volunteer medical license authorized under this section exemption from provisions of § 73-25-3, see § 73-25-3.

Inapplicability of fees and fines provided for in § 73-25-14 to renewal of special volunteer medical license authorized under this section, see § 73-25-14.

RESEARCH REFERENCES

ALR. Valuing damages in personal injury actions awarded for gratuitously rendered nursing and medical care. 49 A.L.R.5th 685.

§ 73-25-19. Nonresidents.

Nonresident physicians not holding license from the state shall not be permitted to practice medicine under any circumstances after remaining in the state for five (5) days, except when called in consultation by a licensed physician residing in this state. This section shall not apply to any nonresident physician who holds a temporary license to practice medicine at a youth camp issued under the provisions of Section 75-74-8 and Section 73-25-17.

SOURCES: Codes, 1892, § 3254; 1906, § 3692; Hemingway's 1917, § 6377; 1930, § 5859; 1942, § 8889; Laws, 1973, ch. 307, § 7; Laws, 1981, ch. 428, § 4, eff from and after July 1, 1981.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Applicability of this section to osteopaths, see § 73-25-25.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 60, 61.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 24-29.

§ 73-25-21. Licensees from other states or Canada may be granted license without examination; affiliation with boards of medical examiners.

The State Board of Medical Licensure may grant license to practice medicine without examination as to learning to graduates in medicine or osteopathic medicine who hold license to practice medicine from another state, provided the requirements in such state are equal to those required by the

State Board of Medical Licensure. The State Board of Medical Licensure may affiliate with and recognize for the purpose of waiving examination diplomates of the National Board of Medical Examiners, or the National Board of Examiners for Osteopathic Physicians and Surgeons in granting license to practice medicine in Mississippi. In addition, the board may grant a license to practice medicine without examination to Licentiates of the Medical Council of Canada (LMCC) who are graduates of Canadian medical schools which are accredited by the Liaison Committee on Medical Education, as sponsored by the American Medical Association and the Association of American Medical Colleges, and by the Committee for Accreditation of Canadian Medical Schools, as sponsored by the Canadian Medical Association and the Association of Canadian Medical Colleges.

The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Codes, 1906, § 3693; Hemingway's 1917, § 6378; 1930, § 5860; 1942, § 8890; Laws, 1924, ch. 316; Laws, 1973, ch. 307, § 8; Laws, 1980, ch. 415; Laws, 1980, ch. 458, § 14; Laws, 1981, ch. 313, § 1; Laws, 2013, ch. 350, § 25, eff from and after July 1, 2013.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Limited institutional license granted to graduates of foreign medical schools not endorsable to other states, see § 73-25-23.

Applicability of this section to osteopaths, see § 73-25-25.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Refusal of licensing authority of another state to issue or renew license permit or certificate to practice medicine in that state or the revocation, suspension or other restriction imposed on the license, permit or certificate issued by the other state licensing authority as grounds for nonissuance, suspension revocation or restriction of license in this state, see § 73-25-29.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

Comparable Laws from other States — Alabama: Code of Ala. § 34-24-331.

Arkansas: A.C.A. § 17-95-405.

Florida: Fla. Stat. § 458.313.

Georgia: O.C.G.A. § 43-34-29.3.

Louisiana: La. R.S. § 37:1276.

South Carolina: S.C. Code Ann. § 40-47-30.

Tennessee: Tenn. Code Ann. § 63-6-211.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 57 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 24-29.

§ 73-25-23. Licensing of graduates of foreign medical schools.

The State Board of Medical Licensure is hereby authorized and empowered to grant limited institutional license for the practice of medicine in state institutions to graduates of foreign medical colleges approved by the National Educational Council for Foreign Medical Graduates or its successor, subject to the conditions as set out herein.

Any graduate of a foreign medical college approved by the organizations specified in the foregoing paragraph who is employed or is being considered for employment to practice medicine in one or more Mississippi state-supported institution(s) located in the same county shall make application for license to the State Board of Medical Licensure. The application shall be made on a form prescribed by the Board of Medical Licensure as required by laws of the State of Mississippi. The application shall also state the institution or institutions in which the applicant has assurance of employment. The State Board of Medical Licensure is hereby authorized to establish minimum standards of qualifications including moral, experience and proficiency for such applicants. The application and the board's recommendation shall be forwarded to the board of trustees and director of the institution(s) in which the applicant wishes to practice.

Upon receipt of such approved application from the State Board of Medical Licensure, the board of trustees or the governing authority and director of the institution or health center shall submit the application for review to the local medical society, the member of the Board of Trustees of the State Medical Association of that district and the member of the State Board of Medical Licensure of the district in which the institution is located. A formal recommendation from each of these, along with that of the board of trustees and director of the institution, shall become a part of the application, and shall then be returned to the State Board of Medical Licensure. If a majority of the recommendations are in favor of the applicant, the State Board of Medical Licensure may, in its discretion, issue a limited license to practice medicine. The holder of such a license shall be subject to all the laws of the State of Mississippi governing the practice of medicine.

Such license shall be for one (1) year and shall be in such form as the State Board of Medical Licensure shall prescribe, and shall be issued for practice in a particular institution and shall not be endorsable to another state. The license must be renewed annually, after such review as the State Board of Medical Licensure considers necessary. A graduate of a foreign medical school so licensed may hold such limited institutional license no longer than five (5) years. However, any graduate of a foreign medical school so licensed and employed by any state institution on January 1, 1981, shall not be subject to the five-year limitation created hereby. In addition, the State Board of Medical Licensure, in its discretion, may waive the five-year limitation on limited institutional licenses for any graduate of a foreign medical school who holds such license.

It is the intent of this section to enable Mississippi institutions to utilize the services of qualified graduates of foreign medical colleges during the period necessary for them to secure citizenship papers, and to meet other requirements for a regular license, including Educational Council for Foreign Medical Graduates certification. The State Board of Medical Licensure is hereby authorized, in its discretion, to refuse to renew, or to revoke such limited license if the holder of such license has failed to avail himself of the opportunity to take the examination for regular licensure after becoming eligible for such examination.

The State Board of Medical Licensure may establish reasonable and uniform license fees and shall make such rules and regulations as it considers necessary to carry out the purposes of this section.

The State Board of Medical Licensure is hereby authorized and directed to grant a full license for the practice of medicine to a graduate of a foreign medical school who has previously been granted an institutional license in one or more Mississippi state-supported institutions for a twenty-nine-year period of time and who on July 1, 2001, was serving as director of a Mississippi state-supported hospital and who has passed the clinical competency part of the Flex Examination for the State of Mississippi.

SOURCES: Codes, 1942, § 8886.5; Laws, 1971, ch. 323, § 1; Laws, 1980, ch. 458, § 15; Laws, 1983, ch. 427; Laws, 1987, ch. 453; Laws, 2001, ch. 318, § 1; Laws, 2002, ch. 370, § 1; Laws, 2013, ch. 492, § 1, eff from and after passage (approved April 15, 2013.)

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

ATTORNEY GENERAL OPINIONS

The limited license language added by the 2001 amendment applies only to those individuals who meet the three following conditions: (1) the person must be a graduate of a foreign medical school approved by the Medical Board, (2) they must have been employed to practice medicine at a state-supported institution for a 28 year period of time, and (3) the person must, on July 1, 2001, be serving as a director of a state-supported hospital. Burnett, Mar. 30, 2001, A.G. Op. #01-0174.

The language contained in both this section and the rules and regulations of the State Board of Medical Licensure does not require that a physician be employed directly by the state prior to being eligible for a limited institutional license. As long as the graduate of a foreign medical school is employed to practice in a state institution, or is being considered for employment to practice in a state institution, and meets all other requirements established by this section, the fact that this physician is or will be employed by an entity having a contract with the state will not adversely impact that physician's licensure status. Burnett, July 16, 2004, A.G. Op. 04-0301.

RESEARCH REFERENCES

Am Jur. 19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Form 1.

§ 73-25-25. Osteopaths.

Any person desiring to practice osteopathic medicine in this state must first obtain a license from the state board of medical licensure by passing the same examination as those applying to practice medicine. The state board of medical licensure shall also license doctors of osteopathy who meet the conditions of Sections 73-25-17, 73-25-19 or 73-25-21. License to practice osteopathic medicine must be recorded as required by law for license to practice medicine, with like penalty on failure to so record.

SOURCES: Codes, 1906, § 3696; Hemingway's 1917, § 6381; 1930, § 5861; 1942, § 8891; Laws, 1973, ch. 307, § 9; Laws, 1980, ch. 458, § 16, eff from and after July 1, 1980.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

Appointment of graduates of osteopathic medical schools to the state board of medical licensure, see § 73-43-3.

Injunctions to restrain illegal practice of profession, see § 73-51-1.

RESEARCH REFERENCES

ALR. Liability of osteopath for medical malpractice. 73 A.L.R.4th 24.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 41, 48 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 24-29.

§ 73-25-27. Suspension or revocation of license; notice and opportunity for hearing; appeal; subpoena power; validity of suspended or revoked license.

The State Board of Medical Licensure after notice and opportunity for a hearing to the licentiate, is authorized to suspend or revoke for any cause named in this chapter any license it has issued, or the renewal thereof, that authorizes any person to practice medicine, osteopathy, or any other method of preventing, diagnosing, relieving, caring for, or treating, or curing disease, injury or other bodily condition. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

The notice shall be effected by registered mail or personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days or more than sixty (60) days from the date of the mailing or the service, at which time the licentiate shall be given an opportunity for a prompt and fair hearing. For the purpose of the hearing the board, acting by and through its executive office, may subpoena persons and papers on its own behalf and on behalf of the licentiate, including records obtained under Section 73-25-28 and Section 73-25-83(c), may administer oaths and the testimony when properly transcribed, together with the papers and exhibits, shall be admissible in evidence for or against the licentiate. At the hearing the licentiate may appear by counsel and personally in his own behalf. Any person sworn and examined as a witness in the hearing shall not be held to answer criminally, nor shall any papers or documents produced by the witness be competent evidence in any criminal proceedings against the witness other than for perjury in delivering his evidence. The board or its designee, in the conduct of any hearing, shall not be bound by strict laws or rules of evidence. The board may adopt rules and discovery and procedure governing all proceedings before it. On the basis of any such hearing, or upon default of the licentiate, the board shall make a determination specifying its findings of fact and conclusions of law. The board shall make its determination based upon a preponderance of the evidence.

A copy of the determination shall be sent by registered mail or served personally upon the licentiate. The decision of the board revoking or suspending the license shall become final thirty (30) days after so mailed or served unless within that period the licentiate appeals the decision to the chancery court, under the provisions of this section. The appeal to the chancery court shall be based solely on the record made before the board. A transcript of the proceedings and evidence, together with exhibits, presented at the hearing before the board in the event of appeal shall be a part of the record before the chancery court. The chancery court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may, in the discretion of the chancellor, be tried in vacation. Appeals may be taken to the Supreme Court of the State of Mississippi as provided by law from any final action of the chancery court. No such person shall be allowed to practice medicine in violation of any action of the chancery court affirming, in whole or in part, the determination of the board, while any such appeal to the Supreme Court is pending.

For the purpose of conducting investigations, the board, through its executive director, may issue subpoenas to any individual, clinic, hospital, pharmacy or other entity having in its possession papers, documents, medical charts, prescriptions or any other nonfinancial records. Any such subpoenas issued by the executive director shall be made pursuant to an order of the board entered on its minutes, determined on a case-by-case basis. Investigatory subpoenas, as provided in this section, may be served either by personal process or by registered mail, and upon service shall command production of the papers and documents to the board at the time and place so specified. The board shall be entitled to the assistance of the chancery court or the chancellor in vacation, which, on petition by the board, shall issue ancillary subpoenas and petitions and may punish as for contempt of court in the event of noncompliance with the subpoenas or petitions.

For the purpose of conducting hearings, the board through its executive director may subpoena persons and papers on its own behalf and on behalf of the respondent, including records obtained under Section 73-25-28 and Section 73-25-83(c), may administer oaths, and may compel the testimony of witnesses. Any such subpoenas issued by the executive director shall be made pursuant to an order of the board entered on its minutes, determined on a case-by-case basis. It may issue subpoenas to take testimony, and testimony so taken and sworn to shall be admissible in evidence for and against the respondent. The board shall be entitled to the assistance of the chancery court or the chancellor in vacation, which, on petition by the board, shall issue ancillary subpoenas and petitions and may punish as for contempt of court in the event of noncompliance with the subpoenas or petitions.

Unless the court otherwise decrees, a license that has been suspended by the board for a stated period of time shall automatically become valid on the expiration of that period and a license that has been suspended for an indefinite period shall become again valid if and when the board so orders, which it may do on its own motion or on the petition of the respondent. A license that has been revoked shall not be restored to validity except: (1) by order of the board based on petition for reinstatement filed under Section 73-25-32 or (2) by order of the chancery court or Supreme Court following appeal. Any licentiate whose license becomes again valid after a period of suspension or after it has been restored to validity by order of the board or by an order of the court, shall record it again in the office of the clerk of the circuit court of the county in which he resides in conformity with the requirements of Section 73-25-13. Nothing in this chapter shall be construed as limiting or revoking the authority of any court or of any licensing or registering officer or board, other than the State Board of Medical Licensure, to suspend, revoke and reinstate licenses and to cancel registrations under the provisions of Section 41-29-311.

SOURCES: Codes, 1930, § 5863; 1942, § 8893; Laws, 1922, ch. 287; Laws, 1938, Ex. Sess. ch. 32; Laws, 1964, ch. 430, § 1; Laws, 1980, ch. 458, § 17; Laws, 1987, ch. 500, § 4; Laws, 1996, ch. 507, § 56; Laws, 2004, 1st Ex Sess, ch. 1, § 16; Laws, 2009, ch. 477, § 1, eff from and after passage (approved Mar. 31, 2009.)

Editor's Note — Sections 73-25-13, referred to in the next-to-last sentence of the last paragraph, was repealed by Laws of 2016, ch. 310, § 1, effective from and after passage (approved April 4, 2016).

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Application of procedures in this section to license revocation hearings against optometrists accused of engaging in certain unprofessional conduct, see § 73-19-23.

Issuance of a temporary license to a physician who has been admitted for treatment in a drug/alcohol treatment program, or who is enrolled in the fellowship of addictionology in the Mississippi State Medical Association impaired professionals program, see § 73-25-17.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Grounds for nonissuance, suspension, revocation or restriction of license, see § 73-25-29.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

Power of executive committee of state board of medical licensure to conduct hearings pursuant to § 73-25-27, see § 73-43-14.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

JUDICIAL DECISIONS

1. In general.

Physician whose hospital staff privileges were suspended was not denied procedural due process where statutory scheme provided for appeal to the Chancery Court; 30-day period for appeal to Chancery Court in such matter did not violate Supremacy Clause of Article VI of the U.S. Const. Caine v. Hardy, 943 F.2d 1406 (5th Cir. 1991), cert. denied, 503 U.S. 936, 112 S. Ct. 1474, 117 L. Ed. 2d 618 (1992).

In proceeding to revoke a license under this section [Code 1942, § 8893], it is sufficient if the licensee is informed with reasonable certainty of the nature and cause of the accusation against him, has reasonable opportunity to defend against proof of such charges, and the proceeding is conducted in a fair and impartial manner, free from any just suspicion or prejudice, unfairness, fraud, or oppression. Mississippi State Bd. of Health v. Johnson, 197 Miss. 417, 19 So. 2d 445 (1944), error overruled, 197 Miss. 429, 19 So. 2d 827 (1944), appeal dismissed, 324 U.S. 822, 65 S. Ct. 679, 89 L. Ed. 1392 (1945).

It is not necessary, in giving a physician notice to appear at hearing upon charges of having performed abortions not necessary to save the lives of certain pregnant women, to describe the means or technique used in producing the abortions, or to undertake to give a definition thereof. Mississippi State Bd. of Health v. Johnson, 197 Miss. 417, 19 So. 2d 445 (1944), error overruled, 197 Miss. 429, 19 So. 2d 827 (1944), appeal dismissed, 324 U.S. 822, 65 S. Ct. 679, 89 L. Ed. 1392 (1945).

Action of executive committee at a called meeting at which only two of the members were present, and notice issued pursuant thereto to a physician to appear before the state board of health at a named time and place for a hearing upon charges therein set out (performing abortions not necessary to save the lives of pregnant women), constituted valid acts of the board itself. Mississippi State Bd. of Health v. Johnson, 197 Miss. 417, 19 So. 2d 445 (1944), error overruled, 197 Miss. 429, 19 So. 2d 827 (1944), appeal dismissed, 324 U.S. 822, 65 S. Ct. 679, 89 L. Ed. 1392 (1945).

Strict rules of pleading do not apply to revocation proceedings under this section [Code 1942, § 8893]. Mississippi State

Bd. of Health v. Johnson, 197 Miss. 417, 19 So. 2d 445 (1944), error overruled, 197 Miss. 429, 19 So. 2d 827 (1944), appeal dismissed, 324 U.S. 822, 65 S. Ct. 679, 89 L. Ed. 1392 (1945).

A complaint, formal or otherwise, to either the board or the executive committee, is not essential to the initiation of proceedings to revoke a license of a physician for performing abortions not necessary to save the lives of pregnant women. Mississippi State Bd. of Health v. Johnson, 197 Miss. 417, 19 So. 2d 445 (1944), error overruled, 197 Miss. 429, 19 So. 2d 827 (1944), appeal dismissed, 324 U.S. 822, 65 S. Ct. 679, 89 L. Ed. 1392 (1945).

RESEARCH REFERENCES

ALR. Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare or similar welfare program for providing medical services. 50 A.L.R.3d 549.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer. 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Tort liability of medical society or professional association for failure to discipline or investigate negligent or otherwise incompetent medical practitioner. 72 A.L.R.4th 1148.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist. 74 A.L.R.4th 969.

Medical malpractice: measure and elements of damages in actions based on loss of chance. 81 A.L.R.4th 485.

Existence, nature, and application to medical professional disciplinary board of privilege against disclosure of identity of informer. 86 A.L.R.4th 1024.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine. 10 A.L.R.5th 1.

Malpractice in diagnosis or treatment of meningitis. 51 A.L.R.5th 301.

Wrongful or Excessive Prescription of Drugs as Ground for Revocation or Suspension of Physician's or Dentist's License to Practice. 19 A.L.R. 6th 577.

Pretrial Discovery in Disciplinary Proceedings Against Physician. 65 A.L.R.6th 295.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 89 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Forms 13, 24.

38 Am. Jur. Proof of Facts 2d 445, Vicarious Liability of Physician for Negligence of Another.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 60, 61 et seq.

§ 73-25-28. Right of board of medical licensure to examine records; records subject to subpoena; confidentiality and destruction of records; board to provide information to hospitals.

(1) In any case in which disciplinary action against a medical physician, osteopathic physician or podiatrist is being considered by the State Board of Medical Licensure, the executive officer of the board, or its investigators accompanied by any member of the board or any licensed physician or

podiatrist appointed to act for the board, upon reasonable cause as defined below, may enter, at a time convenient to all parties, any hospital, clinic, office of a medical physician, osteopathic physician or podiatrist or emergency care facility to inspect and copy patient records, charts, emergency room records or any other document which would assist the board in its investigation of a medical physician, osteopathic physician or podiatrist. Reasonable cause shall be demonstrated by allegations of one or more of the following: (a) a single incident of gross negligence; (b) a pattern of inappropriate prescribing of controlled substances; (c) an act of incompetence or negligence causing death or serious bodily injury; (d) a pattern of substandard medical care; (e) a pattern of unnecessary surgery or unindicated medical procedures; (f) disciplinary action taken against a physician or podiatrist by a licensed hospital or by the medical staff of the hospital; (g) voluntary termination by a physician or podiatrist of staff privileges or having restrictions placed thereon; or (h) habitual personal use of narcotic drugs or other drugs having addiction-forming or addiction-sustaining liability, or the habitual personal use of intoxicating liquors or alcoholic beverages, to an extent which affects professional competency. Whether reasonable cause exists shall be determined by the executive officer and executive committee of the board, and documentation of that determination shall be provided to the hospital, clinic, office or emergency care facility before entry for inspection and copying hereunder.

(2) A certified copy of any record inspected or copied pursuant to subsection (1) shall be subject to subpoena by the board to be used as evidence before it in a licensure disciplinary proceeding initiated pursuant to the provisions of Sections 73-25-1 through 73-25-39, 73-25-51 through 73-25-67, 73-25-81 through 73-25-95 and 73-27-1 through 73-27-19, Mississippi Code of 1972. All references to a patient's name and address or other information which would identify the patient shall be deleted from the records unless a waiver of the medical privilege is obtained from the patient.

(3) All records of the investigation and all patient charts, records, emergency room records or any other document that may have been copied shall be kept confidential and shall not be subject to discovery or subpoena. If no disciplinary proceedings are initiated within a period of five (5) years after the determination of insufficient cause, then the board shall destroy all records obtained pursuant to this section.

(4) Notwithstanding any right to privacy, confidentiality, privilege or exemption from public access conferred by this section, Section 73-52-1, or otherwise by statute or at law, the board shall provide to any hospital, as defined in Section 41-9-3, any and all information it may have concerning any physician who has applied for a license, other than information contained in records exempt from the provisions of the Mississippi Public Records Act of 1983 pursuant to Sections 45-29-1 and 45-29-3, Mississippi Code of 1972, upon receipt by the board of a written request from the hospital for such information and documentation that the physician has applied for appointment or reappointment to the medical staff of the hospital or staff privileges at the hospital. The board, any member of the board, and its agents or employees, acting

without malice in providing the documents or information hereunder, shall be immune from civil or criminal liability.

SOURCES: Laws, 1987, ch. 500, § 1, eff from and after July 1, 1987.

Editor's Note — Sections 45-29-1 and 45-29-3, referred to in (4), were repealed by Laws of 2008, ch. 392, § 4, effective from and after July 1, 2008.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Mississippi Public Records Act, see §§ 25-61-1 et seq.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Right of board to subpoena records obtained pursuant to this section, see § 73-25-27.

Right of examining committee of board of medical licensure to inspect patient records in accordance with this section, see § 73-25-57.

Right of physicians appointed by board of medical licensure to inspect patient records in accordance with this section, see § 73-25-85.

Application of this section to investigations of podiatrist, see § 73-27-13.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

JUDICIAL DECISIONS

1. In general.

State board of medical licensure is instrumentality of state amounting to alter ego such that suit against board by state citizen is precluded by Eleventh Amendment immunity provisions; executive officer of board was protected by qualified immunity in release of information concerning plaintiff physician to hospital because physician executed release for information. Williams v. Morgan, 710 F. Supp. 1080 (S.D. Miss. 1989).

ATTORNEY GENERAL OPINIONS

The exemption stated in § 41-63-9(2) applies to the State Board of Medical Licensure and, when read in conjunction with § 73-25-28(1), indicates that the board is entitled to discovery of any records or proceedings brought by a hospital review committee that relate to a matter the board has under investigation. Burnett, Feb. 22, 2002, A.G. Op. #02-0053.

RESEARCH REFERENCES

ALR. Physician-patient privilege as extending to patient's medical or hospital records. 10 A.L.R.4th 552.

§ 73-25-29. Nonissuance, suspension, revocation, restriction, denial of reinstatement, or denial of renewal of license; grounds.

The grounds for the nonissuance, suspension, revocation or restriction of a license or the denial of reinstatement or renewal of a license are:

(1) Habitual personal use of narcotic drugs, or any other drug having addiction-forming or addiction-sustaining liability.

(2) Habitual use of intoxicating liquors, or any beverage, to an extent which affects professional competency.

(3) Administering, dispensing or prescribing any narcotic drug, or any other drug having addiction-forming or addiction-sustaining liability otherwise than in the course of legitimate professional practice.

(4) Conviction of violation of any federal or state law regulating the possession, distribution or use of any narcotic drug or any drug considered a controlled substance under state or federal law, a certified copy of the conviction order or judgment rendered by the trial court being prima facie evidence thereof, notwithstanding the pendency of any appeal.

(5) Procuring, or attempting to procure, or aiding in, an abortion that is not medically indicated.

(6) Conviction of a felony or misdemeanor involving moral turpitude, a certified copy of the conviction order or judgment rendered by the trial court being prima facie evidence thereof, notwithstanding the pendency of any appeal.

(7) Obtaining or attempting to obtain a license by fraud or deception.

(8) Unprofessional conduct, which includes, but is not limited to:

(a) Practicing medicine under a false or assumed name or impersonating another practitioner, living or dead.

(b) Knowingly performing any act which in any way assists an unlicensed person to practice medicine.

(c) Making or willfully causing to be made any flamboyant claims concerning the licensee's professional excellence.

(d) Being guilty of any dishonorable or unethical conduct likely to deceive, defraud or harm the public.

(e) Obtaining a fee as personal compensation or gain from a person on fraudulent representation of a disease or injury condition generally considered incurable by competent medical authority in the light of current scientific knowledge and practice can be cured or offering, undertaking, attempting or agreeing to cure or treat the same by a secret method, which he refuses to divulge to the board upon request.

(f) Use of any false, fraudulent or forged statement or document, or the use of any fraudulent, deceitful, dishonest or immoral practice in connection with any of the licensing requirements, including the signing in his professional capacity any certificate that is known to be false at the time he makes or signs such certificate.

(g) Failing to identify a physician's school of practice in all professional uses of his name by use of his earned degree or a description of his school of practice.

(9) The refusal of a licensing authority of another state or jurisdiction to issue or renew a license, permit or certificate to practice medicine in that jurisdiction or the revocation, suspension or other restriction imposed on a license, permit or certificate issued by such licensing authority which prevents or restricts practice in that jurisdiction, a certified copy of the disciplinary order or action taken by the other state or jurisdiction being prima facie evidence thereof, notwithstanding the pendency of any appeal.

(10) Surrender of a license or authorization to practice medicine in another state or jurisdiction or surrender of membership on any medical staff or in any medical or professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct which would constitute grounds for action as defined in this section.

(11) Final sanctions imposed by the United States Department of Health and Human Services, Office of Inspector General or any successor federal agency or office, based upon a finding of incompetency, gross misconduct or failure to meet professionally recognized standards of health care; a certified copy of the notice of final sanction being prima facie evidence thereof. As used in this paragraph, the term "final sanction" means the written notice to a physician from the United States Department of Health and Human Services, Officer of Inspector General or any successor federal agency or office, which implements the exclusion.

(12) Failure to furnish the board, its investigators or representatives information legally requested by the board.

(13) Violation of any provision(s) of the Medical Practice Act or the rules and regulations of the board or of any order, stipulation or agreement with the board.

(14) Violation(s) of the provisions of Sections 41-121-1 through 41-121-9 relating to deceptive advertisement by health care practitioners.

(15) Performing or inducing an abortion on a woman in violation of any provision of Sections 41-41-131 through 41-41-145.

In addition to the grounds specified above, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Codes, 1942, § 8893.1; Laws, 1964, ch. 430, § 2; Laws, 1973, ch. 307, § 10; Laws, 1978, ch. 351, § 1; Laws, 1987, ch. 497; Laws, 1989, ch. 314, § 1; Laws, 1996, ch. 507, § 57; Laws, 1997, ch. 564, § 1; Laws, 2012, ch. 409, § 9; Laws, 2014, ch. 506, § 10; Laws, 2016, ch. 419, § 12, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment deleted the last sentence of (14), which read: "This paragraph shall stand repealed on July 1, 2016."

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

The exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Physician failing to report communicable or infectious diseases to state board of health, see § 41-23-1.

Suspension or revocation of registration to dispense controlled substance under Uniform Controlled Substances Law, see § 41-29-129.

Suspension or revocation of license or registration of physician for violation of Uniform Narcotic Drug Law, see § 41-29-311.

Physician failing to report cases of inflammation of eyes of new born, see § 41-35-11.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Medical practice act, see §§ 73-25-1, et seq.

Issuance of a temporary license to a physician who has been admitted for treatment in a drug/alcohol treatment program, or who is enrolled in the fellowship of addictionology in the Mississippi State Medical Association impaired professionals program, see § 73-25-17.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Alternative disciplinary measures, see § 73-25-30.

Reinstatement of suspended or revoked license, see § 73-25-32.

Restrictions on physician's license under disabled physician law, see §§ 73-25-51 et seq.

Grounds for taking of disciplinary action by physician members of the state board of health, see § 73-25-83.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

Criminal abortions, see § 97-3-3.

Manslaughter by intoxicated physician who unintentionally causes another's death through administration of poison, drug, or other medicine, or performance of surgery, see § 97-3-39.

Physician signing or issuing prescription, containing false statement necessitating use of alcohol, see § 97-31-45.

JUDICIAL DECISIONS

1. In general.
2. Jurisdiction.
3. Substantial evidence.

1. In general.

The only justification or excuse which a physician may invoke at proceedings to revoke his license on grounds of having committed an abortion, is that such was necessary to save the woman's life. Mississippi State Bd. of Health v. Johnson, 197 Miss. 417, 19 So. 2d 445 (1944), error overruled, 197 Miss. 429, 19 So. 2d 827 (1944), appeal dismissed, 324 U.S. 822, 65 S. Ct. 679, 89 L. Ed. 1392 (1945).

2. Jurisdiction.

Chancery court erred in ruling that the Mississippi State Board of Medical Licensure lacked jurisdiction because it had jurisdiction to discipline a doctor for misdiagnosing patients; the board's discipline was explicitly authorized by statue and was based on substantial evidence because the doctor admitted that his diagnoses were meant to be relied upon by other medical people and patients and that he allowed non-professionals to prepare and publish his reports without his final approval. Miss. State Bd. of Med. Licensure v. Harron, 163 So. 3d 945 (Miss. Ct. App. Sept. 16, 2014).

Jurisdiction of the Mississippi State Board of Medical Licensure to discipline doctors is not limited to situations where the doctor is actually practicing medicine on a particular patient; with the privilege of holding a valid medical license in Mississippi comes statutory oversight of the Board. Miss. State Bd. of Med. Licensure v. Harron, 163 So. 3d 945 (Miss. Ct. App. Sept. 16, 2014).

3. Substantial evidence.

Chancery court erred in ruling that the Mississippi State Board of Medical Licensure lacked substantial evidence to discipline a doctor and that its ruling was arbitrary and capricious because the doctor published reports diagnosing a disease with no real attempt to differentiate those who had the disease from those with a remote possibility of having it; the Board has the authority, and the duty, to adjudicate disciplinary cases independently of what some other state's medical board might do. Miss. State Bd. of Med. Licensure v. Harron, 163 So. 3d 945 (Miss. Ct. App. Sept. 16, 2014).

RESEARCH REFERENCES

ALR. Alcoholism, narcotics addiction, or misconduct with respect to alcoholic beverages or narcotics, as ground for revocation or suspension of license to practice medicine or dentistry. 93 A.L.R.2d 1398.

Entrapment as a defense in proceedings to revoke or suspend license to practice law or medicine. 61 A.L.R.3d 357.

Physician's or other healer's conduct, or conviction of offense not directly related to medical practice as ground for disciplinary action. 34 A.L.R.4th 609.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action. 44 A.L.R.4th 248.

Liability of hospital or clinic for sexual relationships with patients by staff physicians, psychologists, and other healers. 45 A.L.R.4th 289.

Physician's tort liability for unauthorized disclosure of confidential information about patient. 48 A.L.R.4th 668.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer. 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Right of tortfeasor initially causing injury to recover indemnity or contribution from medical attendant aggravating injury or causing new injury in course of treatment. 72 A.L.R.4th 231.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist. 74 A.L.R.4th 969.

Legal malpractice in handling or defending medical malpractice claim. 78 A.L.R.4th 725.

Malpractice: Physician's liability for injury or death resulting from side effects of drugs intentionally administered to or prescribed for patient. 47 A.L.R.5th 433.

Malpractice in diagnosis and treatment of male urinary tract and related organs. 48 A.L.R.5th 575.

Liability of health maintenance organizations (HMOs) for negligence of member physicians. 51 A.L.R.5th 271.

Malpractice in diagnosis or treatment of meningitis. 51 A.L.R.5th 301.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 65 et seq., 71 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Forms 11, 14, 15.

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons and Other Healers, Form 12.1 (complaint to enjoin suspension or revocation of license arising from performance of judgment for services for which licensee was required was discharged in bankruptcy).

38 Am. Jur. Proof of Facts 2d 445, Vicarious Liability of Physician for Negligence of Another.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 55-59.

§ 73-25-30. Suspension or revocation of license; alternative disciplinary measures; assessment of costs.

(1) The Mississippi State Board of Medical Licensure, in exercising its authority under the provisions of Section 73-25-29, shall have the power to discipline the holder of a license who has been found by the board in violation of that statute after notice and a hearing as provided by law, and the licensee shall be disciplined as follows:

(a) By placing him upon probation, the terms of which may be set by the board, or

(b) By suspending his right to practice for a time deemed proper by the board, or

(c) By revoking his license, or

(d) By taking any other action in relation to his license as the board may deem proper under the circumstances.

(2) Upon the execution of a disciplinary order by the board, either following a hearing or in lieu of a hearing, the board, in addition to the disciplinary powers specified in subsection (1) of this section, may assess the licensee for those reasonable costs that are expended by the board in the investigation and conduct of a proceeding for licensure disciplinary action including, but not limited to, the cost of process service, court reporters, witness fees, expert witnesses, investigators, and other related expenses. Money collected by the board under this section shall be deposited to the credit of the special fund of the board to reimburse the existing current year appropriated budget.

(3) An assessment of costs under this section shall be paid to the board by the licensee, upon the expiration of the period allowed for appeals under Section 73-25-27, or may be paid sooner if the licensee elects. Cost assessed under this section shall not exceed Ten Thousand Dollars ($10,000.00).

(4) When an assessment of costs by the board against a licensee in accordance with this section is not paid by the licensee when due under this section, the licensee shall be prohibited from practicing medicine until the full amount is paid. In addition, the board may institute and maintain proceedings in its name for enforcement of payment in the Chancery Court of the First Judicial District of Hinds County. When those proceedings are instituted, the board shall certify the record of its proceedings, together with all documents and evidence, to the chancery court. The matter shall be heard in due course by the court, which shall review the record and make its determination thereon. The hearing on the matter, in the discretion of the chancellor, may be tried in vacation.

SOURCES: Laws, 1975, ch. 415; Laws, 1980, ch. 458, § 18; Laws, 1999, ch. 362, § 1; Laws, 2005, ch. 318, § 1, eff from and after July 1, 2005.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

State board of medical licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR. Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer. 59 A.L.R.4th 1104.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine. 10 A.L.R.5th 1.

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

38 Am. Jur. Proof of Facts 2d 445, Vicarious Liability of Physician for Negligence of Another.

§ 73-25-31. Suspension or revocation of licenses; orders and judgments of board.

Every order and judgment of the board shall take effect immediately on its promulgation unless the board in such order or judgment fixes a probationary period for licentiate. Such order and judgment shall continue in effect unless upon appeal the court by proper order or decree terminates it earlier. The board may make public its orders and judgments in such manner and form as it deems proper. It shall in event of the suspension or revocation of a license direct the clerk of the circuit court of the county in which that license was recorded to cancel such record.

SOURCES: Codes, 1942, § 8893.2; Laws, 1964, ch. 430, § 3, eff from and after passage (approved June 11, 1964).

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Issuance of a temporary license to a physician who has been admitted for treatment in a drug/alcohol treatment program, or who is enrolled in the fellowship of addictionology in the Mississippi State Medical Association impaired professionals program, see § 73-25-17.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

RESEARCH REFERENCES

ALR. Applicability of statute of limitations or doctrine of laches to proceeding to revoke or suspend license to practice medicine. 51 A.L.R.4th 1147.

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

38 Am. Jur. Proof of Facts 2d 445, Vicarious Liability of Physician for Negligence of Another.

§ 73-25-32. Suspension or revocation of license; reinstatement; criminal history records check and fingerprinting required.

(1) A person whose license to practice medicine or osteopathy has been revoked or suspended may petition the Mississippi State Board of Medical Licensure to reinstate this license after a period of not less than one (1) year has elapsed from the date of the revocation or suspension. The procedure for the reinstatement of a license that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(2) The petition shall be accompanied by two (2) or more verified recommendations from physicians or osteopaths licensed by the Board of Medical Licensure to which the petition is addressed and by two (2) or more recommendations from citizens each having personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed and such facts as may be required by the Board of Medical Licensure.

The petition may be heard at the next regular meeting of the Board of Medical Licensure but not earlier than thirty (30) days after the petition was filed. No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which he is under probation or parole. The hearing may be continued from time to time as the Board of Medical Licensure finds necessary.

(3) In determining whether the disciplinary penalty should be set aside and the terms and conditions, if any, that should be imposed if the disciplinary penalty is set aside, the Board of Medical Licensure may investigate and consider all activities of the petitioner since the disciplinary action was taken against him, the offense for which he was disciplined, his activity during the time his certificate was in good standing, his general reputation for truth, professional ability and good character; and it may require the petitioner to pass an oral examination.

(4) The investigation shall require the petitioner to undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each petitioner shall submit a full set of the petitioner's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose.

Any and all state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

The board shall provide to the department the fingerprints of the petitioner, any additional information that may be required by the department, and a form signed by the petitioner consenting to the check of the criminal records and to the use of the fingerprints and other identifying information required by the state or national repositories.

The board shall charge and collect from the petitioner, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant.

(5) The Secretary-Treasurer of the Board of Medical Licensure shall enter into his records of the case all actions of the board in setting aside a disciplinary penalty under this section and he shall certify notices to the proper court clerk. The clerk shall make such changes on his records as may be necessary.

SOURCES: Laws, 1975, ch. 364; Laws, 1980, ch. 458, § 19; Laws, 1996, ch. 507, § 58; Laws, 2007, ch. 506, § 4, eff from and after July 1, 2007.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

Criminal history record checks and fingerprinting for health care professional/vocational technical students, see § 37-29-232.

Criminal history record checks and fingerprinting required for new employees providing direct patient care at University of Mississippi Medical Center, see § 37-115-41.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Criminal history record checks and fingerprinting required for applicants for medical licensure, physician assistant licensure, osteopathic licensure, and podiatric licensure, see §§ 73-25-3, 73-25-14, 73-26-3, 73-27-5, and 73-27-12.

State board of medical licensure, see §§ 73-43-1 et seq.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

JUDICIAL DECISIONS

1. In general.

Physician was not entitled to reinstatement of a medical license after completing sentence imposed for federal money laundering conviction; statute bars doctor convicted of felony involving moral turpitude from practicing profession and physician's reputation for truth and veracity were not good. Montalvo v. Mississippi State Bd. of Medical Licensure, 671 So. 2d 53 (Miss. 1996).

Physician's procedural due process rights were satisfied in proceedings that resulted in denial of reinstatement of medical license when physician was provided with opportunity to be heard, to present witnesses, to cross-examine adverse witnesses, to be represented by attorney of physician's choice, and physician was given ample notice of hearings and detailed explanation of why license was not reinstated. Montalvo v. Mississippi State Bd. of Medical Licensure, 671 So. 2d 53 (Miss. 1996).

Law providing that statutes authorizing revocation of medical license must be strictly construed against administrative agency did not apply in proceedings on physician's application for reinstatement of license. Montalvo v. Mississippi State Bd. of Medical Licensure, 671 So. 2d 53 (Miss. 1996).

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. Proof of Facts 2d 445, Vicarious Liability of Physician for Negligence of Another.

§ 73-25-33. Practice of medicine defined.

The practice of medicine shall mean to suggest, recommend, prescribe, or direct for the use of any person, any drug, medicine, appliance, or other agency, whether material or not material, for the cure, relief, or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound or fracture or other bodily injury or deformity, or the practice of obstetrics or midwifery, after having received, or with the intent of receiving therefor, either directly or indirectly, any bonus, gift, profit or compensation; provided, that nothing in this section shall apply to females engaged solely in the practice of midwifery.

SOURCES: Codes, 1906, § 3691; Hemingway's 1917, § 6376; 1930, § 5858; 1942, § 8888; Laws, 1896, ch. 68.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Definition of "valid prescription," as it pertains to prescriptions for controlled substances, for the purposes of this chapter, see § 41-29-137.

As to right of physician to prescribe, administer, dispense, mix or prepare narcotic drugs under Uniform Narcotic Drug Law, see § 41-29-305.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Infliction of death sentence not construed as practice of medicine, see § 99-19-53.

JUDICIAL DECISIONS

1. Construction and application.
2. Particular conduct as practice of medicine.
3. Miscellaneous.

1. Construction and application.

The art of midwifery does not include the performance of abortions. Spears v. Circuit Court, Ninth Judicial Dist., 517 F.2d 360 (5th Cir. 1975).

Sustaining a conviction of a chiropractor, who, for compensation, injected into the body of patient by the use of hypodermic needles vitamins or penicillin for the cure, relief, or palliation of the patient's ailments, of practicing medicine without a license, would not so construe this section [Code 1942, § 8888] and Code 1942, § 2332, as to render them in violation of the constitutional right of a citizen to liberty and pursuit of happiness, or to constitute a restriction upon the right of private contract. Harris v. State, 229 Miss. 755, 92 So. 2d 217 (1957).

The "practice of surgery" is limited to manual operations, usually performed by surgical instruments or appliances, as distinguished from "practice of medicine," which includes the use of medicine and drugs for the purpose of either curing, mitigating or alleviating bodily diseases. Joyner v. State, 181 Miss. 245, 179 So. 573, 115 A.L.R. 954 (1938).

Needle used for application of electricity to diseased tonsils held an "appliance or other agency" within statute. Joyner v. State, 181 Miss. 245, 179 So. 573, 115 A.L.R. 954 (1938).

2. Particular conduct as practice of medicine.

Use of microwave diathermy, electrical muscle stimulators and ultra sound equipment by chiropractor constituted practice of medicine without a license; nor was use of such modalities protected under chiropractic licensing statute where it made no express provision therefor and where it seemed likely that the legislature, had it intended to allow the use of such hazardous modalities by chiropractors, would have provided for substantially the same safeguards that underlie the use of X-ray machines by chiropractors; the recommending or prescribing of vitamins by a chiropractor also constituted the unlicensed practice of medicine where, by definition, the use of drugs was prohibited to chiropractors and where vitamins, which are a medicine, fell within the statutory definition of the term "drugs." Norville v. Mississippi State Medical Ass'n, 364 So. 2d 1084 (Miss. 1978).

In a prosecution for the practice of medicine without a license, a chiropractor, who, for compensation, injected into the body of patients by the use of hypodermic needle vitamins or penicillin for the cure, relief or palliation of the ailments of which the patients were complaining, came within the statutory definition of practicing medicine. Harris v. State, 229 Miss. 755, 92 So. 2d 217 (1957).

Licensed chiropractor held not authorized to engage in use of any methods pertaining to practice of medicine or surgery. Joyner v. State, 181 Miss. 245, 179 So. 573, 115 A.L.R. 954 (1938).

Chiropractor who for fee attempted removal with electric needle applied to tonsils, held guilty of practice of medicine without license. Joyner v. State, 181 Miss. 245, 179 So. 573, 115 A.L.R. 954 (1938).

Practice of "electrotherapy" which is use of different kinds of electric machines for therapeutic purposes, held not lawful without license as physician or surgeon. Joyner v. State, 181 Miss. 245, 179 So. 573, 115 A.L.R. 954 (1938).

Chiropractors held not physicians. S.H. Kress & Co. v. Sharp, 156 Miss. 693, 126 So. 650, 68 A.L.R. 167 (1930).

Person prescribing certain preparations or selling medicine pursuant to diagnosis is engaged in practice of medicine. Redmond v. State ex rel. Att'y Gen., 152 Miss. 54, 118 So. 360 (1928).

A practitioner of osteopathy, who treats diseases only by manipulation of the patient's limbs, muscles, ligaments and bones does not practice medicine within the meaning of this section [Code 1942, § 8888]. Hayden v. State, 81 Miss. 291, 33 So. 653, 95 Am. St. R. 471 (1903).

3. Miscellaneous.

Chancery court erred in ruling that the Mississippi State Board of Medical Licensure lacked jurisdiction because it had jurisdiction to discipline a doctor for misdiagnosing patients; the board's discipline was explicitly authorized by statue and was based on substantial evidence because the doctor admitted that his diagnoses were meant to be relied upon by other medical people and patients and that he allowed non-professionals to prepare and publish his reports without his final approval. Miss. State Bd. of Med. Licensure v. Harron, 163 So. 3d 945 (Miss. Ct. App. Sept. 16, 2014).

In prosecution of chiropractor, evidence of what accused was taught, held inadmissible since sole issue was whether treatment constituted practice of medicine or surgery. Joyner v. State, 181 Miss. 245, 179 So. 573, 115 A.L.R. 954 (1938).

Whether liquid used by chiropractor on patient's throat preparatory to inserting needle for application of electricity to diseased tonsils, was medicine or anaesthetic instead of mineral water, held for jury. Joyner v. State, 181 Miss. 245, 179 So. 573, 115 A.L.R. 954 (1938).

ATTORNEY GENERAL OPINIONS

Out-of-state utilization review involves physician who is not present in Mississippi, does not examine patient in Mississippi, and does not give medical advice or perform medical services in Mississippi; under these conditions, such review does not constitute practice of medicine in Mississippi within Miss. Code Section 73-25-33. Morgan, May 18, 1993, A.G. Op. #93-0088.

Where an out-of-state physician provides orders outside the State of Mississippi to be administered by a nurse in the State of Mississippi, the physician is "practicing medicine" in the State as defined by Section 73-25-33 and is therefore required to be licensed to practice medicine by the Mississippi State Board of Medical Licensure. Bradshaw, December 8, 1995, A.G. Op. #95-0610.

In a scenario involving "tele-medicine," an out-of-state physician, who is not physically practicing medicine in the State of Mississippi, is not "practicing medicine" as defined by Section 73-25-33 and therefore is not required to be licensed by the Mississippi State Board of Medical Licensure. Bradshaw, December 8, 1995, A.G. Op. #95-0610.

RESEARCH REFERENCES

ALR. Acupuncture as illegal practice of medicine. 72 A.L.R.3d 1257.

Liability of physician, for injury to or death of third party, due to failure to disclose driving-related impediment. 43 A.L.R.4th 153.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 1 et seq., 24 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 1-4, 165-170, 172-174, 178, 179.

Practice References. Frankel and Zimmerly, Lawyers' Medical Cyclopedia, Fourth Edition (Matthew Bender).

Goldsmith, Medical Malpractice: Guide to Medical Issues (Matthew Bender).

Gray and Gordy, Attorneys' Textbook of Medicine, Third Edition (Matthew Bender).

Harney, Medical Malpractice, Fifth Edition (Michie).

Louisell and Williams, Medical Malpractice (Matthew Bender).

Health Care Law: A Practical Guide (Matthew Bender).

§ 73-25-34. Telemedicine; licensing requirements for practicing medicine across state lines.

(1) For the purposes of this section, telemedicine, or the practice of medicine across state lines, shall be defined to include any one or both of the following:

(a) Rendering of a medical opinion concerning diagnosis or treatment of a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic or other means from within this state to such physician or his agent; or

(b) The rendering of treatment to a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic or other means from within this state to such physician or his agent.

(2) Except as hereinafter provided, no person shall engage in the practice of medicine across state lines (telemedicine) in this state, hold himself out as qualified to do the same, or use any title, word or abbreviation to indicate to or induce others to believe that he is duly licensed to practice medicine across state lines in this state unless he has first obtained a license to do so from the State Board of Medical Licensure and has met all educational and licensure requirements as determined by the State Board of Medical Licensure.

(3) The requirement of licensure as set forth in subsection (2) above shall not be required where the evaluation, treatment and/or the medical opinion to be rendered by a physician outside this state (a) is requested by a physician duly licensed to practice medicine in this state, and (b) the physician who has requested such evaluation, treatment and/or medical opinion has already established a doctor/patient relationship with the patient to be evaluated and/or treated.

SOURCES: Laws, 1997, ch. 436, § 1, eff from and after July 1, 1997.

Cross References — Granting licenses without examination to licensees from other states, see § 73-25-21.

Disciplinary actions by State Board of Medical Licensure, see §§ 73-25-81 et seq.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

§ 73-25-35. Registered nurses licensed and certified as nurse practitioners.

Registered nurses who are licensed and certified by the Mississippi Board of Nursing as nurse practitioners are not prohibited from such nursing practice, but are entitled to engage therein without a physician's license.

SOURCES: Codes, 1892, § 3253; 1906, § 3690; Hemingway's 1917, § 6375; 1930, § 5857; 1942, § 8887; Laws, 1990, ch. 459, § 1, eff from and after July 1, 1990.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Duties of midwives to report cases of inflammation of eyes of new born, see § 41-35-3.

Duty of midwives to administer prophylactic in eyes of new born, see § 41-35-9.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

RESEARCH REFERENCES

ALR. Midwifery: state regulation. 59 A.L.R.4th 929.

§ 73-25-37. Liability of physician, dentist, nurse, emergency medical technician, etc., for rendering emergency care; immunity from civil liability for good faith use of automated external defibrillator by person untrained in its use; immunity from civil liability for good faith use of auto-injectable epinephrine by trained school personnel.

(1) No duly licensed, practicing physician, physician assistant, dentist, registered nurse, licensed practical nurse, certified registered emergency medical technician, or any other person who, in good faith and in the exercise of reasonable care, renders emergency care to any injured person at the scene of an emergency, or in transporting the injured person to a point where medical assistance can be reasonably expected, shall be liable for any civil damages to the injured person as a result of any acts committed in good faith and in the exercise of reasonable care or omissions in good faith and in the exercise of reasonable care by such persons in rendering the emergency care to the injured person.

(2)(a) Any person who in good faith, with or without compensation, renders emergency care or treatment by the use of an Automated External Defibrillator (AED) in accordance with the provisions of Sections 41-60-31 through 41-60-35, as well as the person responsible for the site where the AED is located if the person has provided for compliance with the provisions of Sections 41-60-31 through 41-60-35, shall be immune from civil liability for any personal injury as a result of that care or treatment, or as a result of any act, or failure to act, in providing or arranging further medical treatment, where the person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances and the person's actions or failure to act does not amount to willful or wanton misconduct or gross negligence.

(b) A person who has not complied with the provisions of Sections 41-60-31 through 41-60-35, but who has access to an AED and uses it in good faith in an emergency as an ordinary prudent person would have done in the same or similar circumstances, shall be immune from civil liability for any personal injury as a result of an act or omission related to the operation of or failure to operate an AED if the person's actions or failure to act do not amount to willful or wanton misconduct or gross negligence.

(3) Any employee of a local public school district, a private school, or parochial school, trained in the administration of auto-injectable epinephrine, who provides, administers, or assists in the administration of auto-injectable epinephrine, in accordance with the provisions of Section 37-11-71, to a student believed in good faith to be having an anaphylactic reaction, shall be immune from civil liability for any personal injury as a result of that care or treatment if the employee's actions or failure to act do not amount to willful or wanton misconduct or gross negligence.

(4) The immunity from civil liability for any personal injury under subsection (2) of this section includes the licensed physician who authorizes, directs or supervises the installation or provision of AED equipment in or on any premises or conveyance other than a medical facility, the owner of the premises where an AED is used, the purchaser of the AED, a person who uses an AED during an emergency for the purpose of attempting to save the life of another person who is or who appears to be in cardiac arrest, and the person who provides the CPR and AED training.

(5) The immunity from civil liability for any personal injury under subsection (3) of this section includes the licensed physician who prescribes the auto-injectable epinephrine, the school district, or any other entity, that legally obtained the auto-injectable epinephrine, and the person who provides the training in the administration of auto-injectable epinephrine.

(6) The immunity from civil liability under subsection (2) and subsection (3) of this section does not apply if the personal injury results from the gross negligence or willful or wanton misconduct of the person rendering the emergency care.

(7) Except in cases of gross negligence or willful misconduct, civil immunity shall apply to any licensed physician or licensed pharmacist who prescribes or makes recommendation to an eligible patient regarding prescription for or treatment with an investigational drug, biological product or device under the provisions of Section 41-131-1, and the State Board of Medical Licensure and/or the State Board of Pharmacy, as the case may be, shall be prohibited from taking any adverse action against the license of such physician or pharmacist based solely on the physician's action under the provisions of Section 41-131-1.

SOURCES: Codes, 1942, § 8893.5; Laws, 1962, ch. 413; Laws, 1964, ch. 431; Laws, 1975, ch. 329; Laws, 1976, ch. 405; Laws, 1979, ch. 376, § 1; Laws, 1999, ch. 489, § 4; Laws, 2007, ch. 428, § 1; Laws, 2014, ch. 464, § 2; Laws, 2015, ch. 423, § 2, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in subsection (2). The reference to "Sections 1 through 3 of this act," was changed to "Sections 41-60-31 through 41-60-35,". The Joint Committee ratified the correction at its May 16, 2002, meeting.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Definition's applicable to this section, see § 41-60-31.

Non-liability in civil damages of persons rendering assistance at scene of boating accident, see § 59-21-55.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

JUDICIAL DECISIONS

1. In general.

Section 73-25-37 did not grant absolute immunity to the operator of an ambulance service involved in an emergency situation. Willard v. Mayor & Aldermen of Vicksburg, 571 So. 2d 972 (Miss. 1990).

A strict reading of § 73-25-37 grants immunity to anyone who renders emergency care in good faith and with reasonable care at the scene of an accident or during transportation to a medical facility. However, those who have a pre-existing duty to render aid should not be allowed to hide behind the cloak of the Good Samaritan Statute and, therefore, the statute should be amended to include a pre-existing duty exception. Additionally, the standard of care required by the statute is one of reasonableness, which is the same as the common law standard. Thus, the statute fails miserably in its 2-fold purpose, which is to remove the common law liability associated with rescue and to encourage people to stop and render aid to those in need. Willard v. Mayor & Aldermen of Vicksburg, 571 So. 2d 972 (Miss. 1990).

RESEARCH REFERENCES

ALR. Construction and application of "Good Samaritan" statutes. 68 A.L.R.4th 294.

Construction and application of Emergency Medical Treatment and Active Labor Act (42 USCS § 1395dd). 104 A.L.R. Fed. 166.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 167-168, 282.

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Form 107.

Law Reviews. 1979 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 887, December 1979.

Practice References. Frankel and Zimmerly, Lawyers' Medical Cyclopedia, Fourth Edition (Matthew Bender).

Goldsmith, Medical Malpractice: Guide to Medical Issues (Matthew Bender).

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Harney, Medical Malpractice, Fifth Edition (Michie).

Louisell and Williams, Medical Malpractice (Matthew Bender).

Health Care Law: A Practical Guide (Matthew Bender).

§ 73-25-38. Immunity from liability for physicians, physician assistants or certified nurse practitioners providing charitable medical care or voluntarily providing health services without fee while assisting with emergency management or operations in an emergency.

(1) Any licensed physician, physician assistant or certified nurse practitioner who voluntarily provides needed medical or health services to any person without the expectation of payment due to the inability of such person to pay for said services shall be immune from liability for any civil action arising out of the provision of such medical or health services provided in good faith on a charitable basis. This section shall not extend immunity to acts of willful or gross negligence. Except in cases of rendering emergency care wherein the provisions of Section 73-25-37 apply, immunity under this section shall be extended only if the physician, physician assistant or certified nurse practitioner and patient execute a written waiver in advance of the rendering of such medical services specifying that such services are provided without the expectation of payment and that the licensed physician or certified nurse practitioner shall be immune as provided in this subsection. The immunity from liability granted by this subsection also shall extend to actions arising from a church-operated outpatient medical clinic that exists solely for the purpose of providing charitable medical services to persons who are unable to pay for such services, provided that the outpatient clinic receives less than Forty Thousand Dollars ($40,000.00) annually in patient payments.

(2) Any licensed physician, physician assistant or certified nurse practitioner assisting with emergency management, emergency operations or hazard mitigation in response to any emergency, man-made or natural disaster, who voluntarily provides needed medical or health services to any person without fee or other compensation, shall not be liable for civil damages on the basis of any act or omission if the physician, physician assistant or nurse practitioner was acting in good faith and within the scope of their license, education and training and the acts or omissions were not caused from gross, willful or wanton acts of negligence.

(3) Any physician who voluntarily renders any medical service under a special volunteer medical license authorized under Section 73-25-18 without any payment or compensation or the expectation or promise of any payment or compensation shall be immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service unless the act or omission was the result of the physician's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written or oral agreement for the physician to provide a voluntary noncompensated medical service before the rendering of the service by the physician.

(4) Any licensed physician, or any physician who is retired from active practice and who has been previously issued an unrestricted license to practice medicine in any state of the United States or who has been issued a special

volunteer medical license under Section 73-25-18, shall be immune from liability for any civil action arising out of any medical care or treatment provided while voluntarily serving as "doctor of the day" for members of the Mississippi State Legislature, legislative or other state employees, or any visitors to the State Capitol on the date of such service. This subsection shall not extend immunity to acts of willful or gross negligence or misconduct.

SOURCES: Laws, 1993, ch. 601, § 1; Laws, 1995, ch. 332, § 4; Laws, 2007, ch. 428, § 2; Laws, 2017, ch. 360, § 1, eff from and after passage (approved Mar. 20, 2017.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2). The words "Section 1 of this act" were changed to "Section 73-25-18." The Joint Committee ratified the correction at its April 26, 2001, meeting.

Amendment Notes — The 2017 amendment, effective March 20, 2017, in (4), inserted "licensed physician, or any" near the beginning and made a minor stylistic change.

RESEARCH REFERENCES

ALR. Homicide: Liability where death immediately results from treatment or mistreatment of injury inflicted by defendant. 50 A.L.R.5th 467.

Liability of health maintenance organizations (HMOs) for negligence of member physicians. 51 A.L.R.5th 271.

Am Jur. 15 Am. Jur. 2d, Charities § 199.

Practice References. Frankel and Zimmerly, Lawyers' Medical Cyclopedia, Fourth Edition (Matthew Bender).

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Harney, Medical Malpractice, Fifth Edition (Michie).

Louisell and Williams, Medical Malpractice (Matthew Bender).

Health Care Law: A Practical Guide (Matthew Bender).

§ 73-25-39. Books, blanks, and stationery.

The state board of medical licensure shall, in accordance with the provisions of Section 31-1-1, contract for the acquisition of such books, blanks and stationery as may be needed by it in carrying out the provisions of this chapter. The state board of medical licensure shall deliver to the secretary of state such record books as the clerks of the circuit court may need, in which to record licenses to practice medicine, to be by him promptly and safely transmitted at the cost of the state to such of said clerks as the board of medical licensure may designate.

SOURCES: Codes, 1892, § 3255; 1906, § 3694; Hemingway's 1917, § 6379; 1930, § 5862; 1942, § 8892; Laws, 1980, ch. 458, § 20, eff from and after July 1, 1980.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

DISABLED PHYSICIANS

SEC.

73-25-51. Short title.
73-25-53. Conditions warranting restriction, suspension or revocation of license.
73-25-55. Referral of physician to examining committee.
73-25-57. Examination of physician; confidentiality of records.
73-25-59. Physician may request restriction of license.
73-25-61. Examining committee to report findings and determination.
73-25-63. Hearing before state board of health; temporary suspension of license pending hearing.
73-25-65. Reinstatement; judicial review.
73-25-67. Civil immunities.

§ 73-25-51. Short title.

Sections 73-25-51 through 73-25-67 shall be known as the "Disabled Physician Law."

SOURCES: Laws, 1975, ch. 504, § 1, eff from and after passage (approved April 8, 1975).

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

§ 73-25-53. Conditions warranting restriction, suspension or revocation of license.

The license of any physician to practice medicine in this state shall be subject to restriction, suspension or revocation, as hereinafter provided, in case of inability of the licensee to practice medicine with reasonable skill or safety to patients by reason of one or more of the following:

(a) Mental illness;

(b) Physical illness, including but not limited to deterioration through the aging process, or loss of motor skill;

(c) Excessive use or abuse of drugs, including alcohol.

SOURCES: Laws, 1975, ch. 504, § 2, eff from and after passage (approved April 8, 1975).

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Issuance of temporary license to physician who has been admitted for treatment in a drug and/or alcohol treatment program approved by board, see § 73-25-17.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Grounds for disciplinary action against physicians generally, see § 73-25-29.

Reference to examining committee of physician board believes is unable to practice medicine because of a condition described in this section, see § 73-25-55.

Grounds for taking of disciplinary action by physician members of the state board of health, see § 73-25-83.

RESEARCH REFERENCES

ALR. Alcoholism, narcotics addiction, or misconduct with respect to alcoholic beverages or narcotics, as ground for revocation or suspension of license to practice medicine or dentistry. 93 A.L.R.2d 1398.

Professional incompetency as ground for disciplinary measure against physician or dentist. 28 A.L.R.3d 487.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 71 et seq., 77 et seq., 87 et seq.

§ 73-25-55. Referral of physician to examining committee.

(1) If the state board of medical licensure has reasonable cause to believe that a physician licensed to practice medicine in this state is unable to practice medicine with reasonable skill and safety to patients because of a condition described in Section 73-25-53, such board of medical licensure shall cause an examination of such physician to be made as described in subsection (2) of this section and shall, following such examination, take appropriate action within the provisions of Sections 73-25-51 through 73-25-67.

(2) Examination of a physician under this section shall be conducted by an examining committee as provided in the following:

(a) Except as otherwise provided in paragraph (b) below, the board of medical licensure shall refer all cases for such examination to the Mississippi State Medical Association or its constituent bodies for examination by an examining committee as created by such association exclusively for the purpose of such examinations. Such examining committee shall be composed of three (3) practicing physicians and shall include at least one (1) psychiatrist if a question of mental illness is involved.

(b) If the physician to be examined is not a member of the Mississippi State Medical Association, or if the Mississippi State Medical Association is unable or unwilling to act on a referral by the board of medical licensure for examination, the board shall designate the members of an examining committee. Such examining committee shall be composed of three (3) practicing physicians and shall include at least one (1) psychiatrist if a question of mental illness is involved.

SOURCES: Laws, 1975, ch. 504, § 3; Laws, 1980, ch. 458, § 21, eff from and after July 1, 1980.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

§ 73-25-57. Examination of physician; confidentiality of records.

(1) The examining committee assigned to examine a physician pursuant to referral by the board under Section 73-25-55 shall conduct an examination of such physician for the purpose of determining the physician's fitness to practice medicine with reasonable skill and safety to patients, either on a restricted or unrestricted basis, and shall report its findings and recommendations to the board. The committee shall order the physician to appear before the committee for examination and give him ten (10) days' notice of time and place of the examination, together with a statement of the cause for such examination. Such notice shall be served upon the physician either personally or by registered or certified mail with return receipt requested.

(2) If the examining committee, in its discretion, should deem an independent mental or physical examination of the physician necessary to its determination of the fitness of the physician to practice, the committee shall order the physician to submit to such examination. Any person licensed to practice medicine in this state shall be deemed to have waived all objections to the admissibility of the examining committee's report in any proceedings before the board under Sections 73-25-51 through 73-25-67 on the grounds of privileged communication. Any physician ordered to an examination before the committee under subsection (2) shall be entitled to an independent mental or physical examination if he makes request therefor.

(3) Any physician who submits to a diagnostic mental or physical examination as ordered by the examining committee shall have a right to designate another physician to be present at the examination and make an independent report to the board.

(4) Failure of a physician to comply with a committee order under subsection (2) to appear before it for examination or to submit to mental or physical examination under this section shall be reported by the committee to the board, and unless due to circumstances beyond the control of the physician, shall be grounds for suspension by the board of the physician's license to

practice medicine in this state until such time as such physician has complied with the order of the committee.

(5) The examining committee may inspect patient records in accordance with the provisions of Section 73-25-28.

(6) All patient records, investigative reports and other documents in possession of the board and examining committee shall be deemed confidential and not subject to subpoena or disclosure unless so ordered by the court from which the subpoena issued, but the court, in its discretion, may limit use or disclosure of such records. Notwithstanding, and to encourage the prompt reporting of disabled practitioners, neither the board nor examining committee shall reveal the identity of any source of information where the source has requested anonymity.

SOURCES: Laws, 1975, ch. 504, § 4; Laws, 1987, ch. 500, § 5; Laws, 1991, ch. 336, § 1; Laws, 1991, ch. 367, § 1; Laws, 2004, ch. 460, § 1, eff from and after July 1, 2004.

Editor's Note — Laws of 1991, ch. 336, § 1, effective July 1, 1991, and approved March 15, 1991, amended this section. Subsequently, Laws of 1991, ch. 367, § 1, effective July 1, 1991, and approved March 15, 1991, amended this section without reference to ch. 336. As set out above, this section contains the language as amended by ch. 367, which represents the latest legislative expression on the subject.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

RESEARCH REFERENCES

ALR. Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist. 74 A.L.R.4th 969.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 89 et seq.

§ 73-25-59. Physician may request restriction of license.

A physician may request in writing to the board a restriction of his license to practice medicine. The board may grant such request for restriction and shall have authority, if it deems appropriate, to attach conditions to the licensure of the physician to practice medicine within specified limitations, and waive the commencement of any proceeding under Section 73-25-63. Removal of a voluntary restriction on licensure to practice medicine shall be subject to the procedure for reinstatement of license in Section 73-25-65.

SOURCES: Laws, 1975, ch. 504, § 5, eff from and after passage (approved April 8, 1975).

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

§ 73-25-61. Examining committee to report findings and determination.

(1) The examining committee shall report to the board its findings on the examination of the physician under Section 73-25-57, the determination of the committee as to the fitness of the physician to engage in the practice of medicine with reasonable skill and safety to patients, either on a restricted or unrestricted basis, and any management that the committee may recommend. Such recommendation by the committee shall be advisory only and shall not be binding on the board.

(2) The board may accept or reject the recommendation of the examining committee to permit a physician to continue to practice with or without any restriction on his license to practice medicine, or may refer the matter back to the examining committee for further examination and report thereon.

(3) In the absence of a voluntary agreement by a physician under Section 73-25-59 for restriction of the licensure of such physician to practice medicine, any physician shall be entitled to a hearing in formal proceedings before the board and a determination on the evidence as to whether or not restriction, suspension or revocation of licensure shall be imposed.

SOURCES: Laws, 1975, ch. 504, § 6, eff from and after passage (approved April 8, 1975).

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

§ 73-25-63. Hearing before state board of health; temporary suspension of license pending hearing.

(1) The board may proceed against a physician under Sections 73-25-51 through 73-25-67 by serving upon such physician at least fifteen (15) days' notice of a time and place fixed for a hearing, together with copies of the examining committee's report and diagnosis. Such notice and reports shall be served upon the physician either personally or by registered or certified mail with return receipt requested.

(2) At said hearing the physician shall have the right to be present, to be represented by counsel, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the board.

(3) At the conclusion of the hearing, the board shall make a determination of the merits and may issue an order imposing one or more of the following:

(a) Make a recommendation that the physician submit to the care, counseling or treatment by physicians acceptable to the board.

(b) Suspend or restrict the license of the physician to practice medicine for the duration of his impairment.

(c) Revoke the license of the physician to practice medicine.

(4) The board may temporarily suspend the license of any physician without a hearing, simultaneously with the institution of proceedings for a hearing under this section, if it finds that the evidence in support of the examining committee's determination is clear, competent and unequivocal and that his continuation in practice would constitute an imminent danger to public health and safety.

(5) Neither the record of the proceedings nor any order entered against a physician may be used against him in any other legal proceedings except upon judicial review as provided herein.

SOURCES: Laws, 1975, ch. 504, § 7, eff from and after passage (approved April 8, 1975).

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

RESEARCH REFERENCES

ALR. Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist. 74 A.L.R.4th 969.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 89 et seq.

§ 73-25-65. Reinstatement; judicial review.

(1) A physician whose licensure has been restricted, suspended or revoked under Sections 73-25-51 through 73-25-67, voluntarily or by action of the board, shall have a right, at reasonable intervals, to petition for reinstatement of his license and to demonstrate that he can resume the competent practice of medicine with reasonable skill and safety to patients. Such petition shall be made in writing and on a form prescribed by the board. Action of the board on such petition shall be initiated by referral to and examination by the examining committee pursuant to the provisions of Sections 73-25-55 and 73-25-57.

The board may, upon written recommendation of the examining committee, restore the licensure of the physician on a general or limited basis or institute a proceeding pursuant to Section 73-25-63 for the determination of the fitness of the physician to resume his practice.

(2) All orders of the board entered under Section 73-25-63(3), (4) shall be subject to judicial review by appeal to the chancery court of the county of the residence of the physician involved against whom the order is rendered, within twenty (20) days following the date of entry of the order, said appeal to be taken and perfected in the same manner as appeals from orders of boards of supervisors.

SOURCES: Laws, 1975, ch. 504, § 8, eff from and after passage (approved April 8, 1975).

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 70, 102 et seq.

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Form 13.

§ 73-25-67. Civil immunities.

There shall be no liability on the part of and no action for damages against:

(a) Any member of the examining committee or the board for any action undertaken or performed by such member within the scope of the functions of such committee or the board under Sections 73-25-51 through 73-25-67 when acting without malice and in the reasonable belief that the action taken by him is warranted; or

(b) Any person providing information to the committee or to the board without malice in the reasonable belief that such information is accurate.

SOURCES: Laws, 1975, ch. 504, § 9, eff from and after passage (approved April 8, 1975).

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

MEDICAL DISCIPLINE AT BEHEST OF PHYSICIAN MEMBERS OF STATE BOARD OF MEDICAL LICENSURE

Sec.

73-25-81. Definitions.
73-25-83. Grounds for disciplinary action by board.
73-25-85. Appointment by board of physicians to investigate professional competency of physician.
73-25-87. Disciplinary action which board is authorized to take.
73-25-89. Temporary disciplinary action without hearing.
73-25-91. Civil and criminal immunities.
73-25-93. Suspension, denial, revocation, or limitation of physician's hospital privileges.
73-25-95. Appeals.

§ 73-25-81. Definitions.

For purposes of Sections 73-25-81 through 73-25-95 the "board" shall mean the physician members of the Mississippi State Board of Medical Licensure who have authority for the licensure and discipline of physicians in the state.

SOURCES: Laws, 1977, ch. 412, § 1; Laws, 1980, ch. 458, § 22, eff from and after July 1, 1980.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Physician members of the state board of health, see § 41-3-1.1.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

§ 73-25-83. Grounds for disciplinary action by board.

The board shall have authority to deny an application for licensure or other authorization to practice medicine in this state and to discipline a physician licensed or otherwise lawfully practicing within this state who, after a hearing, has been adjudged by the board as unqualified due to one or more of the following reasons:

(a) Unprofessional conduct as defined in the physician licensure and disciplinary laws, pursuant to Section 73-25-29;

(b) Professional incompetency in the practice of medicine or surgery; or

(c) Having disciplinary action taken by his peers within any professional medical association or society, whether any such association or society is local, regional, state or national in scope, or being disciplined by a licensed hospital or medical staff of said hospital, or the voluntary surrender or restriction of hospital staff privileges while an investigation or disciplinary proceeding is being conducted by a licensed hospital or medical staff or medical staff committee of said hospital. Provided further, anybody taking action as set forth in this paragraph shall report such action to the board within thirty (30) days of its occurrence.

SOURCES: Laws, 1977, ch. 412, § 2; Laws, 1987, ch. 386, eff from and after July 1, 1987.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Provision that a violation of statutory requirements with respect to performance of an abortion upon a minor shall constitute prima facie evidence of unprofessional conduct, subjecting the physician to action by the State Board of Medical Licensure, see § 41-41-59.

Right of board to subpoena records obtained pursuant to this section, see § 73-25-27.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Disciplinary actions, see § 73-25-87.

Temporary disciplinary action without hearing when board determines continuation of physician's practice poses immediate danger to public, see § 73-25-89.

Suspension of hospital privileges for physician considered by board of hospital to be unqualified because of any of the acts described in this section, see § 73-25-93.

JUDICIAL DECISIONS

1. Jurisdiction.
2. Substantial evidence.

1. Jurisdiction.

Chancery court erred in ruling that the Mississippi State Board of Medical Licensure lacked jurisdiction because it had jurisdiction to discipline a doctor for misdiagnosing patients; the board's discipline was explicitly authorized by statue and was based on substantial evidence because the doctor admitted that his diagnoses were meant to be relied upon by other medical people and patients and that he allowed non-professionals to prepare and publish his reports without his final approval. Miss. State Bd. of Med. Licensure v. Harron, 163 So. 3d 945 (Miss. Ct. App. Sept. 16, 2014).

Jurisdiction of the Mississippi State Board of Medical Licensure to discipline doctors is not limited to situations where the doctor is actually practicing medicine on a particular patient; with the privilege of holding a valid medical license in Mississippi comes statutory oversight of the Board. Miss. State Bd. of Med. Licensure v. Harron, 163 So. 3d 945 (Miss. Ct. App. Sept. 16, 2014).

2. Substantial evidence.

Chancery court erred in ruling that the Mississippi State Board of Medical Licensure lacked substantial evidence to discipline a doctor and that its ruling was arbitrary and capricious because the doctor published reports diagnosing a disease with no real attempt to differentiate those who had the disease from those with a remote possibility of having it; the Board has the authority, and the duty, to adjudicate disciplinary cases independently of what some other state's medical board might do. Miss. State Bd. of Med. Licensure v. Harron, 163 So. 3d 945 (Miss. Ct. App. Sept. 16, 2014).

RESEARCH REFERENCES

ALR. Alcoholism, narcotics addiction, or misconduct with respect to alcoholic beverages or narcotics, as ground for revocation or suspension of license to practice medicine or dentistry. 93 A.L.R.2d 1398.

Revocation or suspension of physician's or surgeon's license for false claims, medical reports, or bills for medical services in personal injury litigation. 95 A.L.R.2d 873.

Professional incompetency as ground for disciplinary measure against physician or dentist. 28 A.L.R.3d 487.

Entrapment as a defense in proceedings to revoke or suspend license to practice law or medicine. 61 A.L.R.3d 357.

Physician's or other healer's conduct, or conviction of offense, not directly related to medical practice as ground for disciplinary action. 34 A.L.R.4th 609.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action. 44 A.L.R.4th 248.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer. 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Tort liability of medical society or professional association for failure to discipline or investigate negligent or otherwise incompetent medical practitioner. 72 A.L.R.4th 1148.

Existence, nature, and application to medical professional disciplinary board of privilege against disclosure of identity of informer. 86 A.L.R.4th 1024.

Liability of physician, nurse, or hospital for failure to contact physician or to keep physician sufficiently informed concerning status of mother during pregnancy, labor, and childbirth. 3 A.L.R.5th 123.

Liability of hospital, physician, or other medical personnel for death or injury to mother or child caused by inadequate attendance or monitoring of patient during and after pregnancy, labor, and delivery. 3 A.L.R.5th 146.

Malpractice: Physician's liability for injury or death resulting from side effects of drugs intentionally administered to or prescribed for patient. 47 A.L.R.5th 433.

Malpractice in diagnosis and treatment of male urinary tract and related organs. 48 A.L.R.5th 575.

Liability of health maintenance organizations (HMOs) for negligence of member physicians. 51 A.L.R.5th 271.

Pretrial Discovery in Disciplinary Proceedings Against Physician. 65 A.L.R. 6th 295.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 71 et seq.

13A Am. Jur. Pl & Pr Forms (Rev), Hospitals and Asylums, Form 22.1 (Complaint, petition, or declaration — By physician — To have suspension declared void and damages).

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Forms 11 et seq.

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons and Other Healers, Form 12.1 (complaint to enjoin suspension or revocation of license arising from performance of judgment for services for which licensee was required was discharged in bankruptcy).

38 Am. Jur. Proof of Facts 2d 445, Vicarious Liability of Physician for Negligence of Another.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 55-59.

§ 73-25-85. Appointment by board of physicians to investigate professional competency of physician.

(1) In addition to any other investigators the board employs, the board shall appoint one or more licensed physicians to act for the board in investi-

gating the conduct relating to the competency of a physician, whenever disciplinary action is being considered for professional incompetence.

(2) Any investigator employed by the board or any licensed physician appointed to act for the board may inspect patient records in accordance with the provisions of Section 73-25-28.

SOURCES: Laws, 1977, ch. 412, § 3; Laws, 1987, ch. 500, § 6, eff from and after July 1, 1987.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

RESEARCH REFERENCES

ALR. Tort liability of medical society or professional association for failure to discipline or investigate negligent or otherwise incompetent medical practitioner. 72 A.L.R.4th 1148.

Existence, nature, and application to medical professional disciplinary board of privilege against disclosure of identity of informer. 86 A.L.R.4th 1024.

§ 73-25-87. Disciplinary action which board is authorized to take.

Whenever the board finds any person unqualified because of any of the grounds set forth in Section 73-25-83, it may enter an order imposing one or more of the following:

(a) Deny his application for a license or other authorization to practice medicine;

(b) Administer a public or private reprimand;

(c) Suspend, limit or restrict his license or other authorization to practice medicine for up to five (5) years, including limiting the practice of such person to, or by the exclusion of, one or more specified branches of medicine, including limitation on hospital privileges;

(d) Revoke his license or other authorization to practice medicine;

(e) Require him to submit to care, counseling or treatment by physicians designated by the board, as a condition for initial, continued or renewal of licensure or other authorization to practice medicine;

(f) Require him to participate in a program of education prescribed by the board; or

(g) Require him to practice under the direction of a physician designated by the board for a specified period of time.

SOURCES: Laws, 1977, ch. 412, § 4, eff from and after passage (approved March 29, 1977).

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

RESEARCH REFERENCES

ALR. Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer. 59 A.L.R.4th 1104.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 65 et seq.

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Forms 11 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 63 et seq.

§ 73-25-89. Temporary disciplinary action without hearing.

If the board determines that evidence in its possession indicates that a physician's continuation in practice or unrestricted practice would constitute an immediate danger to the public, the board may take any of the same actions on a temporary basis, without a hearing, which it could otherwise take under Sections 73-25-81 through 73-25-95 following a hearing, provided proceedings for a hearing before the board are initiated simultaneously with such temporary action without a hearing. Provided, further, that in the event of such temporary action without a hearing, a hearing must be held within fifteen (15) days of such action.

SOURCES: Laws, 1977, ch. 412, § 5, eff from and after passage (approved March 29, 1977).

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

§ 73-25-91. Civil and criminal immunities.

Any entity, organization or person, including the board, any member of the board, its agents or employees, and including any entity or organization or its members referred to in Section 73-25-83, acting without malice in making any report or other information available to the board pursuant to law, or who assists in the organization, investigation or preparation of such report or information, or assists the board in carrying out any of its duties or functions provided by law shall be immune from civil or criminal liability, except that unlawful disclosure of confidential information possessed by the board may be a misdemeanor if otherwise so provided by law.

SOURCES: Laws, 1977, ch. 412, § 6, eff from and after passage (approved March 29, 1977).

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

RESEARCH REFERENCES

ALR. Physician's tort liability for unauthorized disclosure of confidential information about patient. 48 A.L.R.4th 668.

Right of voluntary disclosure of privileged proceedings of hospital medical review or doctor evaluation processes. 60 A.L.R.4th 1273.

§ 73-25-93. Suspension, denial, revocation, or limitation of physician's hospital privileges.

(1) Any hospital licensed pursuant to Sections 41-9-1 et seq. is authorized to suspend, deny, revoke or limit the hospital privileges of any physician practicing or applying to practice therein, if the governing board of such hospital, after consultation with the medical staff considers such physician to be unqualified because of any of the acts set forth in Section 73-25-83; provided, however, that the procedures for such actions shall comply with the hospital and/or medical staff bylaw requirements for due process.

(2) There shall be no liability on the part of, and no cause of any action of any nature arising against, any hospital, hospital medical staff or hospital disciplinary body or members thereof, or their agents or employees, for any action taken without malice in carrying out the provisions of Sections 73-25-81 through 73-25-95.

SOURCES: Laws, 1977, ch. 412, § 7, eff from and after passage (approved March 29, 1977).

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

JUDICIAL DECISIONS

1. In general.
2. Judicial review.

1. In general.

It was error to affirm a hospital's decision to deny a doctor's application for medical-staff privileges because the hospital violated the doctor's due-process rights and its bylaws when it allowed the credentials committee chair to actively participate in the administrative process; the review hearing procedures established by the bylaws disqualified the committee chair from participating in the deliberation and decision since he participated in the initial adverse credentialing recommendation. Molleston v. River Oaks Hosp., Inc., 195 So. 3d 815 (Miss. Ct. App. 2015), writ of certiorari denied by 2016 Miss. LEXIS 296 (Miss. July 28, 2016).

Physician could bring action for damages or other non-reinstatement redress against hospital and its medical staff for their conduct in revoking his surgical privileges if such conduct was undertaken with malice. Wong v. Stripling, 700 So. 2d 296 (Miss. 1997).

The scope of judicial review of a decision by a private hospital, which was licensed pursuant to § 41-9-1 to terminate a physician's staff privileges, was limited to a determination of whether the procedures followed by the hospital violated its own bylaw provisions for due process. Section 73-25-93 limits judicial surveillance of hospital disciplinary proceedings to the narrow inquiry of whether the hospital complied with the procedural due process requirements prescribed by its own bylaws. In § 73-25-93, the legislature recognized the authority of a licensed hospital to control and regulate its staff privileges. The statute delineates no distinction between private or public hospitals in that it refers to any licensed hospital. Wong v. Garden Park Community Hosp., 565 So. 2d 550 (Miss. 1990).

Authority given to hospitals with regard to physicians' hospital privileges under § 73-25-93 does not come within definition of state action which would permit action under 42 USCA § 1983 for revocation of doctor's privileges. Wong v. Stripling, 881 F.2d 200 (5th Cir. 1989).

2. Judicial review.

Where the pediatrician had a difficulty with the intubation of children, the hospital's decision to suspend her privileges in the area of neonatal resuscitation was not arbitrary and capricious. The hospital followed its procedures and bylaws; and the pediatrician was afforded due process because she was permitted to appear at the review hearing, to submit evidence, and to review documents supporting the hospital's decision. Warnick v. Natchez Cmty. Hosp., Inc., 904 So. 2d 1019 (Miss. 2004).

Pediatrician's request for a hearing or appeal made fifteen days after the suspension of her neonatal resuscitation privileges was untimely. The hospital's bylaws provided that a physician whose privileges were suspended could request an appeal within fourteen days of the suspension. Warnick v. Natchez Cmty. Hosp., Inc., 904 So. 2d 1019 (Miss. 2004).

RESEARCH REFERENCES

ALR. Exclusion of or discrimination against physician or surgeon by hospital. 37 A.L.R.3d 645.

Liability in tort for interference with physician's contract or relationship with hospital. 7 A.L.R.4th 572.

Propriety of hospital's conditioning physician's staff privileges on his carrying professional liability or malpractice insurance. 7 A.L.R.4th 1238.

Exclusion of, or discrimination against, physician or surgeon by hospital. 28 A.L.R.5th 107.

Malpractice in diagnosis and treatment of male urinary tract and related organs. 48 A.L.R.5th 575.

Am Jur. 40A Am. Jur. 2d, Hospitals and Asylums §§ 16 et seq.

13A Am. Jur. Pl & Pr Forms (Rev), Hospitals and Asylums, Form 22.1 (Complaint, petition, or declaration — By physician — To have suspension declared void and damages).

32 Am. Jur. Trials 1, Due Process Considerations in Suspension of a Physician's Hospital Staff Privileges.

§ 73-25-95. Appeals.

Any person against whom disciplinary action is taken pursuant to Sections 73-25-81 through 73-25-95 shall have the right of judicial appeal as provided in Section 73-25-27 relating to judicial appeal of board decisions. Provided, further, that no such person shall be allowed to practice medicine or deliver health care services in violation of any disciplinary order or action of the board while any such appeal is pending.

SOURCES: Laws, 1977, ch. 412, § 8, eff from and after passage (approved March 29, 1977).

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

RESEARCH REFERENCES

ALR. Exclusion of, or discrimination against, physician or surgeon by hospital. 28 A.L.R.5th 107.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 102 et seq.

19A Am. Jur. Pl & Pr Forms (Rev), Physicians, Surgeons, and Other Healers, Form 13.

INTERSTATE MEDICAL LICENSURE COMPACT

SEC.
73-25-101. Interstate Medical Licensure Compact created.
73-25-102. "Member board" defined.

§ 73-25-101. Interstate Medical Licensure Compact created.

The Interstate Medical Licensure Compact is enacted into law and entered into by this state with any and all states legally joining in the Compact in accordance with its terms, in the form substantially as follows:

INTERSTATE MEDICAL LICENSURE COMPACT

SECTION 1
Purpose

In order to strengthen access to health care, and in recognition of the advances in the delivery of health care, the member states of the Interstate

Medical Licensure Compact have allied in common purpose to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards, provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients. The Compact creates another pathway for licensure and does not otherwise change a state's existing Medical Practice Act. The Compact also adopts the prevailing standard for licensure and affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and therefore, requires the physician to be under the jurisdiction of the state medical board where the patient is located. State medical boards that participate in the Compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the Compact.

SECTION 2
Definitions

In this Compact:

(a) "Bylaws" means those bylaws established by the Interstate Commission pursuant to Section 11 for its governance, or for directing and controlling its actions and conduct.

(b) "Commissioner" means the voting representative appointed by each member board pursuant to Section 11.

(c) "Conviction" means a finding by a court that an individual is guilty of a criminal offense through adjudication, or entry of a plea of guilt or no contest to the charge by the offender. Evidence of an entry of a conviction of a criminal offense by the court shall be considered final for purposes of disciplinary action by a member board.

(d) "Expedited license" means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the Compact.

(e) "Interstate Commission" means the interstate commission created pursuant to Section 11.

(f) "License" means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization.

(g) "Medical Practice Act" means laws and regulations governing the practice of allopathic and osteopathic medicine within a member state.

(h) "Member board" means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians as directed by the state government.

(i) "Member state" means a state that has enacted the Compact.

(j) "Practice of medicine" means the clinical prevention, diagnosis, or treatment of human disease, injury, or condition requiring a physician to obtain and maintain a license in compliance with the Medical Practice Act of a member state.

(k) "Physician" means any person who:

(1) Is a graduate of a medical school accredited by the Liaison Committee on Medical Education, the Commission on Osteopathic College Accreditation, or a medical school listed in the International Medical Education Directory or its equivalent;

(2) Passed each component of the United States Medical Licensing Examination (USMLE) or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA) within three (3) attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes;

(3) Successfully completed graduate medical education approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(4) Holds specialty certification or a time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists;

(5) Possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;

(6) Has never been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(7) Has never held a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license;

(8) Has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration; and

(9) Is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction.

(*l*) "Offense" means a felony, gross misdemeanor, or crime of moral turpitude.

(m) "Rule" means a written statement by the Interstate Commission promulgated pursuant to Section 12 of the Compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

(n) "State" means any state, commonwealth, district, or territory of the United States.

(o) "State of principal license" means a member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the Compact.

SECTION 3
Eligibility

(a) A physician must meet the eligibility requirements as defined in Section 2(k) to receive an expedited license under the terms and provisions of the Compact.

(b) A physician who does not meet the requirements of Section 2(k) may obtain a license to practice medicine in a member state if the individual complies with all laws and requirements, other than the Compact, relating to the issuance of a license to practice medicine in that state.

SECTION 4
Designation of State of Principal License

(a) A physician shall designate a member state as the state of principal license for purposes of registration for expedited licensure through the Compact if the physician possesses a full and unrestricted license to practice medicine in that state, and the state is:

(1) The state of primary residence for the physician, or

(2) The state where at least twenty-five percent (25%) of the practice of medicine occurs, or

(3) The location of the physician's employer, or

(4) If no state qualifies under subsection (1), subsection (2), or subsection (3), the state designated as state of residence for purpose of federal income tax.

(b) A physician may redesignate a member state as state of principal license at any time, as long as the state meets the requirements in subsection (a).

(c) The Interstate Commission is authorized to develop rules to facilitate redesignation of another member state as the state of principal license.

SECTION 5
Application and Issuance of Expedited Licensure

(a) A physician seeking licensure through the Compact shall file an application for an expedited license with the member board of the state selected by the physician as the state of principal license.

(b) Upon receipt of an application for an expedited license, the member board within the state selected as the state of principal license shall evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification, verifying or denying the physician's eligibility, to the Interstate Commission.

(i) Static qualifications, which include verification of medical education, graduate medical education, results of any medical or licensing examination, and other qualifications as determined by the Interstate Commission through rule, shall not be subject to additional primary source verification where already primary source verified by the state of principal license.

(ii) The member board within the state selected as the state of principal license shall, in the course of verifying eligibility, perform a criminal background check of an applicant, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, with the exception of federal employees who have suitability determination in accordance with United States Code of Federal Regulation Section 731.202.

(iii) Appeal on the determination of eligibility shall be made to the member state where the application was filed and shall be subject to the law of that state.

(c) Upon verification in subsection (b), physicians eligible for an expedited license shall complete the registration process established by the Interstate Commission to receive a license in a member state selected pursuant to subsection (a), including the payment of any applicable fees.

(d) After receiving verification of eligibility under subsection (b) and any fees under subsection (c), a member board shall issue an expedited license to the physician. This license shall authorize the physician to practice medicine in the issuing state consistent with the Medical Practice Act and all applicable laws and regulations of the issuing member board and member state.

(e) An expedited license shall be valid for a period consistent with the licensure period in the member state and in the same manner as required for other physicians holding a full and unrestricted license within the member state.

(f) An expedited license obtained though the Compact shall be terminated if a physician fails to maintain a license in the state of principal licensure for a nondisciplinary reason, without redesignation of a new state of principal licensure.

(g) The Interstate Commission is authorized to develop rules regarding the application process, including payment of any applicable fees, and the issuance of an expedited license.

SECTION 6
Fees for Expedited Licensure

(a) A member state issuing an expedited license authorizing the practice of medicine in that state may impose a fee for a license issued or renewed through the Compact.

(b) The Interstate Commission is authorized to develop rules regarding fees for expedited licenses.

SECTION 7
Renewal and Continued Participation

(a) A physician seeking to renew an expedited license granted in a member state shall complete a renewal process with the Interstate Commission if the physician:

(1) Maintains a full and unrestricted license in a state of principal license;

(2) Has not been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(3) Has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license; and

(4) Has not had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration.

(b) Physicians shall comply with all continuing professional development or continuing medical education requirements for renewal of a license issued by a member state.

(c) The Interstate Commission shall collect any renewal fees charged for the renewal of a license and distribute the fees to the applicable member board.

(d) Upon receipt of any renewal fees collected in subsection (c), a member board shall renew the physician's license.

(e) Physician information collected by the Interstate Commission during the renewal process will be distributed to all member boards.

(f) The Interstate Commission is authorized to develop rules to address renewal of licenses obtained through the Compact.

SECTION 8
Coordinated Information System

(a) The Interstate Commission shall establish a database of all physicians licensed, or who have applied for licensure, under Section 5.

(b) Notwithstanding any other provision of law, member boards shall report to the Interstate Commission any public action or complaints against a licensed physician who has applied or received an expedited license through the Compact.

(c) Member boards shall report disciplinary or investigatory information determined as necessary and proper by rule of the Interstate Commission.

(d) Member boards may report any nonpublic complaint, disciplinary, or investigatory information not required by subsection (c) to the Interstate Commission.

(e) Member boards shall share complaint or disciplinary information about a physician upon request of another member board.

(f) All information provided to the Interstate Commission or distributed by member boards shall be confidential, filed under seal, and used only for investigatory or disciplinary matters.

(g) The Interstate Commission is authorized to develop rules for mandated or discretionary sharing of information by member boards.

SECTION 9
Joint Investigations

(a) Licensure and disciplinary records of physicians are deemed investigative.

(b) In addition to the authority granted to a member board by its respective Medical Practice Act or other applicable state law, a member board may participate with other member boards in joint investigations of physicians licensed by the member boards.

(c) A subpoena issued by a member state shall be enforceable in other member states.

(d) Member boards may share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

(e) Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine.

SECTION 10
Disciplinary Actions

(a) Any disciplinary action taken by any member board against a physician licensed through the Compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the Medical Practice Act or regulations in that state.

(b) If a license granted to a physician by the member board in the state of principal license is revoked, surrendered or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action necessary by any member board, on the same status. If the member board in the state of principal license subsequently reinstates the physician's license, a license issued to the physician by any other member board shall remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the Medical Practice Act of that state.

(c) If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may deem the action conclusive as to matter of law and fact decided, and:

(i) Impose the same or lesser sanction(s) against the physician so long as such sanctions are consistent with the Medical Practice Act of that state; or

(ii) Pursue separate disciplinary action against the physician under its respective Medical Practice Act, regardless of the action taken in other member states.

(d) If a license granted to a physician by a member board is revoked, surrendered or relinquished in lieu of discipline, or suspended, then any license(s) issued to the physician by any other member board(s) shall be suspended, automatically and immediately without further action necessary by the other member board(s), for ninety (90) days upon entry of the order by the disciplining board, to permit the member board(s) to investigate the basis for the action under the Medical Practice Act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the ninety (90) day suspension period in a manner consistent with the Medical Practice Act of that state.

SECTION 11

Interstate Medical Licensure Compact Commission

(a) The member states create the "Interstate Medical Licensure Compact Commission."

(b) The purpose of the Interstate Commission is the administration of the Interstate Medical Licensure Compact, which is a discretionary state function.

(c) The Interstate Commission shall be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth in the Compact, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of the Compact.

(d) The Interstate Commission shall consist of two voting representatives appointed by each member state who shall serve as Commissioners. In states where allopathic and osteopathic physicians are regulated by separate member boards, or if the licensing and disciplinary authority is split between multiple member boards within a member state, the member state shall appoint one (1) representative from each member board. A Commissioner shall be a(n):

(1) Allopathic or osteopathic physician appointed to a member board;

(2) Executive director, executive secretary, or similar executive of a member board; or

(3) Member of the public appointed to a member board.

(e) The Interstate Commission shall meet at least once each calendar year. A portion of this meeting shall be a business meeting to address such matters as may properly come before the Commission, including the election of officers. The chairperson may call additional meetings and shall call for a meeting upon the request of a majority of the member states.

(f) The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

(g) Each Commissioner participating at a meeting of the Interstate Commission is entitled to one vote. A majority of Commissioners shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission. A Commissioner shall not delegate a vote to another Commissioner. In the absence of its Commissioner, a member state may delegate voting authority for a specified meeting to another person from that state who shall meet the requirements of subsection (d).

(h) The Interstate Commission shall provide public notice of all meetings and all meetings shall be open to the public. The Interstate Commission may close a meeting, in full or in portion, where it determines by a two-thirds (⅔) vote of the Commissioners present that an open meeting would be likely to:

(1) Relate solely to the internal personnel practices and procedures of the Interstate Commission;

(2) Discuss matters specifically exempted from disclosure by federal statute;

(3) Discuss trade secrets, commercial, or financial information that is privileged or confidential;

(4) Involve accusing a person of a crime, or formally censuring a person;

(5) Discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Discuss investigative records compiled for law enforcement purposes; or

(7) Specifically relate to the participation in a civil action or other legal proceeding.

(i) The Interstate Commission shall keep minutes which shall fully describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, including record of any roll call votes.

(j) The Interstate Commission shall make its information and official records, to the extent not otherwise designated in the Compact or by its rules, available to the public for inspection.

(k) The Interstate Commission shall establish an executive committee, which shall include officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. When acting on behalf of the Interstate Commission, the executive committee shall oversee the administration of the Compact including enforcement and compliance with the provisions of the Compact, its bylaws and rules, and other such duties as necessary.

(*l*) The Interstate Commission may establish other committees for governance and administration of the Compact.

SECTION 12
Powers and Duties of the Interstate Commission

The Interstate Commission shall have the duty and power to:

(a) Oversee and maintain the administration of the Compact;

(b) Promulgate rules which shall be binding to the extent and in the manner provided for in the Compact;

(c) Issue, upon the request of a member state or member board, advisory opinions concerning the meaning or interpretation of the Compact, its bylaws, rules, and actions;

(d) Enforce compliance with Compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;

(e) Establish and appoint committees, including but not limited to an executive committee as required by Section 11, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties;

(f) Pay, or provide for the payment of the expenses related to the establishment, organization, and ongoing activities of the Interstate Commission;

(g) Establish and maintain one or more offices;

(h) Borrow, accept, hire, or contract for services of personnel;

(i) Purchase and maintain insurance and bonds;

(j) Employ an executive director who shall have such powers to employ, select or appoint employees, agents, or consultants, and to determine their qualifications, define their duties, and fix their compensation;

(k) Establish personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

(*l*) Accept donations and grants of money, equipment, supplies, materials and services, and to receive, utilize, and dispose of it in a manner consistent with the conflict of interest policies established by the Interstate Commission;

(m) Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use, any property, real, personal, or mixed;

(n) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(o) Establish a budget and make expenditures;

(p) Adopt a seal and bylaws governing the management and operation of the Interstate Commission;

(q) Report annually to the legislatures and governors of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include reports of financial audits and any recommendations that may have been adopted by the Interstate Commission;

(r) Coordinate education, training, and public awareness regarding the Compact, its implementation, and its operation;

(s) Maintain records in accordance with the bylaws;

(t) Seek and obtain trademarks, copyrights, and patents; and

(u) Perform such functions as may be necessary or appropriate to achieve the purposes of the Compact.

SECTION 13
Finance Powers

(a) The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff. The total assessment must be sufficient to cover the annual budget approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

(b) The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same.

(c) The Interstate Commission shall not pledge the credit of any of the member states, except by, and with the authority of, the member state.

(d) The Interstate Commission shall be subject to a yearly financial audit conducted by a certified or licensed public accountant and the report of the audit shall be included in the annual report of the Interstate Commission.

SECTION 14
Organization and Operation of the Interstate Commission

(a) The Interstate Commission shall, by a majority of Commissioners present and voting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Compact within twelve (12) months of the first Interstate Commission meeting.

(b) The Interstate Commission shall elect or appoint annually from among its Commissioners a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson, or in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission.

(c) Officers selected in subsection (b) shall serve without remuneration from the Interstate Commission.

(d) The officers and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of, or relating to, an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(1) The liability of the executive director and employees of the Interstate Commission or representatives of the Interstate Commission, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state, may not exceed the limits of

liability set forth under the constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(2) The Interstate Commission shall defend the executive director, its employees, and subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(3) To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error; or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

SECTION 15

Rulemaking Functions of the Interstate Commission

(a) The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the Compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the Compact, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

(b) Rules deemed appropriate for the operations of the Interstate Commission shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act" of 2010, and subsequent amendments thereto.

(c) Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule in the United States District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices, provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the authority granted to the Interstate Commission.

SECTION 16
Oversight of Interstate Compact

(a) The executive, legislative, and judicial branches of state government in each member state shall enforce the Compact and shall take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of the Compact and the rules promulgated hereunder shall have standing as statutory law but shall not override existing state authority to regulate the practice of medicine.

(b) All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the Compact which may affect the powers, responsibilities or actions of the Interstate Commission.

(c) The Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, the Compact, or promulgated rules.

SECTION 17
Enforcement of Interstate Compact

(a) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the Compact.

(b) The Interstate Commission may, by majority vote of the Commissioners, initiate legal action in the United States District Court for the District of Columbia, or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the Compact, and its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(c) The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

SECTION 18
Default Procedures

(a) The grounds for default include, but are not limited to, failure of a member state to perform such obligations or responsibilities imposed upon it by the Compact, or the rules and bylaws of the Interstate Commission promulgated under the Compact.

(b) If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the Compact, or the bylaws or promulgated rules, the Interstate Commission shall:

(1) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default; and

(2) Provide remedial training and specific technical assistance regarding the default.

(c) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the Compact upon an affirmative vote of a majority of the Commissioners and all rights, privileges, and benefits conferred by the Compact shall terminate on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(d) Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(e) The Interstate Commission shall establish rules and procedures to address licenses and physicians that are materially impacted by the termination of a member state, or the withdrawal of a member state.

(f) The member state which has been terminated is responsible for all dues, obligations, and liabilities incurred through the effective date of termination including obligations, the performance of which extends beyond the effective date of termination.

(g) The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been terminated from the Compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(h) The defaulting state may appeal the action of the Interstate Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

SECTION 19
Dispute Resolution

(a) The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the Compact and which may arise among member states or member boards.

(b) The Interstate Commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate.

SECTION 20
Member States, Effective Date and Amendment

(a) Any state is eligible to become a member state of the Compact.

(b) The Compact shall become effective and binding upon legislative enactment of the Compact into law by no less than seven (7) states. Thereafter, it shall become effective and binding on a state upon enactment of the Compact into law by that state.

(c) The governors of nonmember states, or their designees, shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the Compact by all states.

(d) The Interstate Commission may propose amendments to the Compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

SECTION 21
Withdrawal

(a) Once effective, the Compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the Compact by specifically repealing the statute which enacted the Compact into law.

(b) Withdrawal from the Compact shall be by the enactment of a statute repealing the same, but shall not take effect until one (1) year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member state.

(c) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing the Compact in the withdrawing state.

(d) The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt of notice provided under subsection (c).

(e) The withdrawing state is responsible for all dues, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(f) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the Compact or upon such later date as determined by the Interstate Commission.

(g) The Interstate Commission is authorized to develop rules to address the impact of the withdrawal of a member state on licenses granted in other member states to physicians who designated the withdrawing member state as the state of principal license.

SECTION 22
Dissolution

(a) The Compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the Compact to one (1) member state.

(b) Upon the dissolution of the Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

SECTION 23
Severability and Construction

(a) The provisions of the Compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

(b) The provisions of the Compact shall be liberally construed to effectuate its purposes.

(c) Nothing in the Compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

SECTION 24
Binding Effect of Compact and Other Laws

(a) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the Compact.

(b) All laws in a member state in conflict with the Compact are superseded to the extent of the conflict.

(c) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Commission, are binding upon the member states.

(d) All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

(e) In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

SOURCES: Laws, 2016, ch. 508, § 1, eff from and after passage (approved May 16, 2016.)

Editor's Note — For more information about the Interstate Medical Licensure Compact, see http://www.imlcc.org/.

Cross References — Mississippi Administrative Procedures Law, see § 25-43-1.101 et seq.

Provisions related to medical practice in Mississippi, see § 73-25-1 et seq.

Comparable Laws: — Other member states:
Alabama: Code of Ala. § 34-24-520 et seq.
Arizona: A.R.S. § 32-3241 et seq.
Colorado: C.R.S. 24-60-3601, 24-60-3602.
Idaho: Idaho Code § 54-1842 et seq.
Illinois: 45 ILCS 180/1 et seq.
Iowa: Iowa Code § 148G.1.
Kansas: K.S.A. § 65-28,133.
Minnesota: Minn. Stat. § 147.38 et seq.
Montana: 37-3-356, MCA.
Nevada: Nev. Rev. Stat. Ann. § 629A.100.
New Hampshire: RSA 329-C:11 through RSA 329-C:24.
Pennsylvania: 63 P.S. § 395.1 et seq.
South Dakota: S.D. Codified Laws §§ 36-4-44, 36-4-45.
Tennessee: Tenn. Code Ann. §§ 63-6-401, 63-6-402.
Utah: Utah Code Ann. § 58-67b-101 et seq.
Washington: Rev. Code Wash. (ARCW) § 18._._(added by 2017 c 195 § 11).
West Virginia: W. Va. Code § 30-1C-1 et seq.
Wisconsin: Wis. Stat. § 448.980 et seq.
Wyoming: Wyo. Stat. § 33-26-701 et seq.

Federal Aspects — United States Code of Federal Regulation Section 731.202, referred to in Section 5(b)(ii), is 5 C.F.R. § 731.202.

§ 73-25-102. "Member board" defined.

The term "member board," as referred to in the Interstate Medical Licensure Compact, shall mean the Mississippi State Board of Medical Licensure established under Section 73-43-1 et seq., acting through its executive director.

SOURCES: Laws, 2016, ch. 508, § 2, eff from and after passage (approved May 16, 2016.)

Cross References — Interstate Medical Licensure Compact, see § 73-25-101.

CHAPTER 26

Physician Assistants

Sec.
73-26-1. Definitions.
73-26-3. Licensing and regulation; minimum requirements; criminal history records check and fingerprinting required [Subsection (5) repealed effective July 1, 2019].
73-26-5. Rules and regulations; appointment of task force.

§ 73-26-1. Definitions.

As used in this chapter:

(a) "Board" means the State Board of Medical Licensure.

(b) "Physician assistant" means a person who meets the board's criteria for licensure as a physician assistant and is licensed as a physician assistant by the board. Nothing in this chapter authorizes the licensure of anesthesiologist's assistants.

(c) "Supervising physician" means a doctor of medicine or a doctor of osteopathic medicine who holds an unrestricted license from the board, and who is in the full-time practice of medicine and who has been approved by the board to supervise physician assistants.

(d) "Supervision" means overseeing and accepting responsibility for the medical services rendered by a physician assistant in a manner approved by the board.

SOURCES: Laws, 2000, ch. 470, § 1, eff from and after July 1, 2000.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the introductory language. The words "As used in the chapter" were changed to "As used in this chapter." The Joint Committee ratified the correction at its May 16, 2002 meeting.

Cross References — Nurses, see §§ 73-15-1 et seq.
Physicians, see §§ 73-25-1 et seq.
State Board of Medical Licensure, see §§ 73-43-1 et seq.

§ 73-26-3. Licensing and regulation; minimum requirements; criminal history records check and fingerprinting required [Subsection (5) repealed effective July 1, 2019].

(1) The State Board of Medical Licensure shall license and regulate the practice of physician assistants in accordance with the provisions of this chapter.

(2) All physician assistants who are employed as physician assistants by a Department of Veterans Affairs health care facility, a branch of the United States military or the Federal Bureau of Prisons, and who are practicing as physician assistants in a federal facility in Mississippi on July 1, 2000, and those physician assistants who trained in a Mississippi physician assistant

program and have been continuously practicing as a physician assistant in Mississippi since 1976, shall be eligible for licensure if they submit an application for licensure to the board by December 31, 2000. Physician assistants licensed under this subsection will be eligible for license renewal so long as they meet standard renewal requirements.

(3) Before December 31, 2004, applicants for physician assistant licensure, except those licensed under subsection (2) of this section, must be graduates of physician assistant educational programs accredited by the Commission on Accreditation of Allied Health Educational Programs or its predecessor or successor agency, have passed the certification examination administered by the National Commission on Certification of Physician Assistants (NCCPA), have current NCCPA certification, and possess a minimum of a baccalaureate degree. Physician assistants meeting these licensure requirements will be eligible for license renewal so long as they meet standard renewal requirements.

(4) On or after December 31, 2004, applicants for physician assistant licensure must meet all of the requirements in subsection (3) of this section and, in addition, must have obtained a minimum of a master's degree in a health-related or science field.

(5) Applicants for licensure who meet all licensure requirements except for the master's degree may be granted a temporary license by the board so long as they can show proof of enrollment in a master's program that will, when completed, meet the master's degree requirement. The temporary license will be valid for no longer than one (1) year, and may not be renewed. This subsection shall stand repealed on July 1, 2019.

(6) For new graduate physician assistants and all physician assistants receiving initial licenses in the state, except those licensed under subsection (2) of this section, supervision shall require the on-site presence of a supervising physician for one hundred twenty (120) days.

(7) To qualify for a Mississippi physician assistant license, an applicant must have successfully been cleared for licensure through an investigation that shall consist of a determination as to good moral character and verification that the prospective licensee is not guilty of or in violation of any statutory ground for denial of licensure. To assist the board in conducting its licensure investigation, all applicants shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose.

Any and all state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

The board shall provide to the department the fingerprints of the applicant, any additional information that may be required by the department, and a form signed by the applicant consenting to the check of the criminal records and to the use of the fingerprints and other identifying information required by the state or national repositories.

The board shall charge and collect from the applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant.

SOURCES: Laws, 2000, ch. 470, § 2; Laws, 2006, ch. 323, § 1; Laws, 2007, ch. 506, § 3; Laws, 2010, ch. 409, § 1; Laws, 2010, ch. 498, § 4; Laws, 2013, ch. 433, § 1; Laws, 2016, ch. 393, § 1, eff from and after July 1, 2016.

Joint Legislative Committee Note — Section 4 of ch. 498, Laws of 2010, effective July 1, 2010 (approved April 7, 2010), amended this section. Section 1 of ch. 409, Laws of 2010, effective July 1, 2010 (approved March 17, 2010), also amended this section. As set out above, this section reflects the language of Section 4 of ch. 498, Laws of 2010, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2016 amendment extended the date of the repealer for subsection (5) by substituting "July 1, 2019" for "July 1, 2016" at the end of (5).

Cross References — Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

Criminal history record checks and fingerprinting for health care professional/vocational technical students, see § 37-29-232.

Criminal history record checks and fingerprinting required for new employees providing direct patient care at University of Mississippi Medical Center, see § 37-115-41.

Criminal history record checks and fingerprinting required for applicants for medical licensure, osteopathic licensure, and podiatric licensure, and on applicants for reinstatement of a license, see §§ 73-25-3, 73-25-14, 73-25-32, 73-27-5, and 73-27-12.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

ATTORNEY GENERAL OPINIONS

A regulation to permit a temporary license before an applicant has completed the master's program and obtained his or her degree is not within the authority of the Mississippi State Board of Medical Licensure. Burnett, Nov. 29, 2005, A.G. Op. 05-0570.

§ 73-26-5. Rules and regulations; appointment of task force.

(1) The board shall promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the

provisions of law regulating the practice of physician assistants. Those rules shall include, but are not limited to: qualifications for licensure for physician assistants; scope of practice of physician assistants; supervision of physician assistants; identification of physician assistants; grounds for disciplinary actions and discipline of physician assistants, which through June 30, 2020, shall specifically include discipline for violation(s) of the provisions of Sections 41-121-1 through 41-121-9 relating to deceptive advertisement by health care practitioners; and setting and charging reasonable fees for licensure and license renewals for physician assistants. However, nothing in this chapter or in rules adopted by the board shall authorize physician assistants to administer or monitor general inhaled anesthesia, epidural anesthesia, spinal anesthesia or monitored anesthesia as utilized in surgical procedures. In addition, the board shall not adopt any rule or regulation or impose any requirement regarding the licensing of physician assistants that conflicts with the prohibitions in Section 73-49-3. The board shall promulgate rules for licensure and license renewals in accordance with Section 33-1-39.

(2) If the board appoints a task force or committee to address physician assistant regulation, at least one (1) member of the task force shall be a nurse practitioner who is a member of the Mississippi Board of Nursing or a nurse practitioner appointee selected by the board from a list of three (3) recommendations submitted by the Mississippi Nurses Association, and at least one (1) member shall be a physician assistant selected by the board from a list of three (3) recommendations submitted by the Mississippi Academy of Physician Assistants.

SOURCES: Laws, 2000, ch. 470, § 3; Laws, 2007, ch. 309, § 21; Laws, 2012, ch. 409, § 10; Laws, 2015, ch. 461, § 6; Laws, 2016, ch. 419, § 13, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment substituted “June 30, 2020” for “June 30, 2016” in the second sentence of (1).

Cross References — Mississippi Board of Nursing, see §§ 73-15-1 et seq.

CHAPTER 27

Podiatrists

Sec.
73-27-1. Podiatry defined.
73-27-3. Board of medical licensure to examine; podiatry advisory committee.
73-27-5. Qualifications; criminal history records check and fingerprinting required.
73-27-7. Examinations; when held.
73-27-9. Examinations; fees; subjects; minimum requirements for licenses; reexamination.
73-27-11. License; recorded; displayed.
73-27-12. Annual renewal of license; requirements for reinstatement after lapse; criminal history records check and fingerprinting.
73-27-13. Refusal to issue license; suspension; revocation [Paragraph (1)(j) repealed effective July 1, 2020].
73-27-15. Practicing without license.
73-27-16. Reinstatement of revoked or suspended licenses.
73-27-17. Penalty.
73-27-19. Exceptions.

§ 73-27-1. Podiatry defined.

(1) The practice of podiatric medicine is that profession concerned with the prevention, examination, diagnosis and medical, surgical and adjuvant treatment of conditions of the human foot. For the purposes of this chapter, "foot" means that part of the human anatomy which consists of the tarsal bones, metatarsal bones and phalanges.

(2) A podiatrist is a medical care provider who engages in the practice of podiatric medicine.

(3) A podiatrist may prescribe and administer drugs and tests, excluding general and spinal anesthesia, that are essential to the practice of podiatric medicine when used for or in connection with treatment of disorders of the human foot.

SOURCES: Codes, 1942, § 8894; Laws, 1938, ch. 189; Laws, 1997, ch. 338, § 1; Laws, 2000, ch. 491, § 1, eff from and after passage (approved Apr. 27, 2000.)

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Penalty for performing any medical diagnosis or treatment outside the scope of this definition, see § 73-27-13.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR. Podiatry or chiropody statutes: validity, construction, and application. 45 A.L.R.4th 888.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers § 36.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 1-4, 165-170, 172-174, 178, 179.

§ 73-27-3. Board of medical licensure to examine; podiatry advisory committee.

(1) The State Board of Medical Licensure shall examine all applicants as hereinafter provided in this chapter.

(2) There is established the Podiatry Advisory Committee to the State Board of Medical Licensure. The advisory committee shall be composed of three (3) licensed and practicing podiatrists in the State of Mississippi. The members of the advisory committee shall be appointed by the executive director of the board from a list of six (6) podiatrists recommended by the Mississippi Podiatric Medical Association who have practiced in the state for not less than three (3) years immediately before their appointment. The podiatrists appointed to the advisory committee shall serve for terms of three (3) years from the time of their appointment. Any vacancy occurring on the advisory committee before the expiration of a term shall be filled by appointment of the executive director of the board from a list of at least two (2) podiatrists recommended by the Mississippi Podiatric Medical Association who have practiced in the state for not less than three (3) years immediately before their appointment. Any appointment to fill a vacancy shall be only for the remainder of the unexpired term.

(3) The Podiatry Advisory Committee shall advise and make recommendations to the State Board of Medical Licensure on all podiatry matters that come before the board. The board shall allow the advisory committee sufficient time to adequately prepare any materials or other information that the committee wants to present or deliver to the board on any matter or issue affecting podiatry. The board shall not make any final decision or take any final action on any podiatry matter until the board has reviewed any materials or other information presented or delivered to it by the advisory committee, provided that the information is delivered within the time period prescribed by the board.

SOURCES: Codes, 1942, § 8895; Laws, 1938, ch. 189; Laws, 1980, ch. 458, § 23; Laws, 1998, ch. 389, § 1, eff from and after July 1, 1998.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

General duties of state board of health, see § 41-3-15.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR. Podiatry or chiropody statutes: validity, construction, and application. 45 A.L.R.4th 888.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers § 22.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 30-39.

§ 73-27-5. Qualifications; criminal history records check and fingerprinting required.

All applicants for license shall have attained the age of twenty-one (21) years, and shall be of good moral character; they shall have had at least four (4) years high school and be graduates of same; they shall have at least one (1) year prepodiatry college education and be graduates of some college of podiatry recognized as being in good standing by the State Board of Medical Licensure. No college of podiatry or chiropody shall be accredited by the board as a college of good standing that does not require for graduation a course of study of at least four (4) years (eight and one-half (8-½) months each) and be recognized by the Council on Education of the American Podiatry Association. However, all podiatrists actively engaged in the practice of podiatry in the State of Mississippi, prior to January 1, 1938, whether graduates or not, shall, upon furnishing proof thereof by displaying their state privilege tax license to the Secretary of the State Board of Medical Licensure, and upon payment of fee of Ten Dollars and Twenty-five Cents ($10.25), be entitled to a license without an examination, and applications for the license shall be filed not later than sixty (60) days after February 17, 1938. Upon payment of a fee prescribed by the State Board of Medical Licensure, not to exceed Five Hundred Dollars ($500.00), a license without examination may be issued to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privileges to this state. The State Board of Medical Licensure may affiliate with the National Board of Chiropody or Podiatry Licensure in granting licenses to practice podiatry in Mississippi, provided the written examination covers at least two-thirds (⅔) of the subjects set forth in Section 73-27-9. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

To qualify for a Mississippi podiatry license, an applicant must have successfully been cleared for licensure through an investigation that shall consist of a determination as to good moral character and verification that the prospective licensee is not guilty of or in violation of any statutory ground for denial of licensure as set forth in Section 73-27-13. To assist the board in conducting its licensure investigation, all applicants shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose.

Any and all state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

The board shall provide to the department the fingerprints of the applicant, any additional information that may be required by the department, and a form signed by the applicant consenting to the check of the criminal records and to the use of the fingerprints and other identifying information required by the state or national repositories.

The board shall charge and collect from the applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Codes, 1942, § 8896; Laws, 1938, ch. 189; Laws, 1958, ch. 359, § 1; Laws, 1979, ch. 439, § 2; Laws, 1980, ch. 458, § 24; Laws, 1987, ch. 308, § 1; Laws, 1989, ch. 315, § 2; Laws, 1997, ch. 588, § 53; Laws, 2007, ch. 506, § 2; Laws, 2013, ch. 350, § 26, eff from and after July 1, 2013.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

Criminal history record checks and fingerprinting for health care professional/vocational technical students, see § 37-29-232.

Criminal history record checks and fingerprinting required for new employees providing direct patient care at University of Mississippi Medical Center, see § 37-115-41.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Criminal history record checks and fingerprinting required for applicants for medical licensure, physician assistant licensure, and osteopathic licensure, and on applicants for reinstatement of a license, see §§ 73-25-3, 73-25-14, 73-25-32, 73-26-3, and 73-27-12.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Examination fees, subjects, see § 73-27-9.

Refusal of a licensing authority of another to state to issue or renew a license or revocation, suspension or other restriction imposed on license issued by another state as grounds for refusal to issue, suspend, revoke or otherwise restrict a license under this chapter, see § 73-27-13.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

Comparable Laws from other States — Alabama: Code of Ala. § 34-24-272.

Florida: Fla. Stat. § 461.006.

Georgia: O.C.G.A. § 43-35-13.

Louisiana: La. R.S. § 37:617.

North Carolina: N.C. Gen. Stat. § 90-202.7.

South Carolina: S.C. Code Ann. § 40-51-110.

Tennessee: Tenn. Code Ann. § 63-3-114.

RESEARCH REFERENCES

ALR. Podiatry or chiropody statutes: validity, construction, and application. 45 A.L.R.4th 888.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 36, 48 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 24-29.

§ 73-27-7. Examinations; when held.

All examinations shall be held concurrently with the regular examinations of the state board of medical licensure.

SOURCES: Codes, 1942, § 8897; Laws, 1938, ch. 189; Laws, 1980, ch. 458, § 25, eff from and after July 1, 1980.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Regular examinations by the state board of medical licensure, see § 73-25-7.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Examination fees, subjects, see § 73-27-9.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR. Podiatry or chiropody statutes: validity, construction, and application. 45 A.L.R.4th 888.

§ 73-27-9. Examinations; fees; subjects; minimum requirements for licenses; re-examination.

Any person not exempt from examination under Section 73-27-5, Mississippi Code of 1972, and desiring a license to practice podiatry shall, upon application to the State Board of Medical Licensure and payment of a fee prescribed by the State Board of Medical Licensure, not to exceed Five Hundred Dollars ($500.00), be examined in the following subjects: anatomy, histology, physiology, chemistry, pharmacy, materia medica, therapeutics, bacteriology, pathology, surgery, dermatology, neurology, physical therapy, diagnosis and roentgenology, orthopedics, chiropody and chiropodial surgery, limited in their scope to the treatment of the human foot and leg, and if found qualified shall receive a license. The minimum of requirements for license shall be a general average of seventy-five percent (75%) of all the subjects involved, provided that a grade of not less than sixty percent (60%) be made on any one (1) subject or branch given in the examination held. Applicants examined and being refused a license shall be entitled to reexamination upon payment of an additional fee prescribed by the State Board of Medical Licensure, not to exceed Five Hundred Dollars ($500.00), for each examination.

SOURCES: Codes, 1942, § 8898; Laws, 1938, ch. 189; Laws, 1958, ch. 359, § 2; Laws, 1979, ch. 439, § 3; Laws, 1980, ch. 458, § 26; Laws, 1987, ch. 308, § 2; Laws, 1989, ch. 315, § 3, eff from and after July 1, 1989.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence. The words "chiropodical surgery" were changed to "chiropodial surgery". The Joint Committee ratified the correction at its May 20, 1998 meeting.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR. Podiatry or chiropody statutes: validity, construction, and application. 45 A.L.R.4th 888.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 36, 48 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 24-29.

§ 73-27-11. License; recorded; displayed.

All licenses shall be recorded in the office of the circuit clerk in which the licensee practices within sixty (60) days from date of issuance. All licenses shall be conspicuously displayed at the offices or other places of practice.

SOURCES: Codes, 1942, § 8899; Laws, 1938, ch. 189.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

RESEARCH REFERENCES

ALR. Podiatry or chiropody statutes: validity, construction, and application. 45 A.L.R.4th 888.

§ 73-27-12. Annual renewal of license; requirements for reinstatement after lapse; criminal history records check and fingerprinting.

(1) Except as provided in Section 33-1-39, the license of every person licensed to practice podiatry in the State of Mississippi shall be renewed annually.

On or before May 1 of each year, the board shall mail a notice of renewal of license to every podiatrist to whom a license was issued or renewed during the current licensing year. The notice shall provide instructions for obtaining and submitting applications for renewal. The State Board of Medical Licensure is authorized to make applications for renewal available via electronic means. The applicant shall obtain and complete the application and submit it to the board in the manner prescribed by the board in the notice before June 30 with the renewal fee of an amount established by the board, but not to exceed Three Hundred Dollars ($300.00), a portion of which fee shall be used to support a program to aid impaired podiatrists. Upon receipt of the application and fee, the board shall verify the accuracy of the application and issue to applicant a certificate of renewal for the ensuing year, beginning July 1 and expiring June 30 of the succeeding calendar year. That renewal shall render the holder thereof a legal practitioner as stated on the renewal form.

(2) Any podiatrist practicing in Mississippi who allows his or her license to lapse by failing to renew the license as provided in subsection (1) may be

reinstated by the board on satisfactory explanation for the failure to renew, by completion of a reinstatement form, and upon payment of the renewal fee for the current year, and shall be assessed a fine of Twenty-five Dollars ($25.00) plus an additional fine of Five Dollars ($5.00) for each month thereafter that the license renewal remains delinquent.

(3) Any podiatrist not practicing in Mississippi who allows his or her license to lapse by failing to renew the license as provided in subsection (1) may be reinstated by the board on satisfactory explanation for the failure to renew, by completion of a reinstatement form and upon payment of the arrearages for the previous five (5) years and the renewal fee for the current year.

(4) Any podiatrist who allows his or her license to lapse shall be notified by the board within thirty (30) days of that lapse.

(5) Any person practicing as a licensed podiatrist during the time his or her license has lapsed shall be considered an illegal practitioner and shall be subject to penalties set forth in Section 73-27-17, provided that he or she has not submitted the required reinstatement form and fee within fifteen (15) days after notification by the board of the lapse.

(6) Any podiatrist practicing in the State of Mississippi whose license has lapsed and is deemed an illegal practitioner under subsection (5) of this section may petition the board for reinstatement of his or her license on a retroactive basis, if the podiatrist was unable to meet the June 30 deadline due to extraordinary or other legitimate reasons, and retroactive reinstatement of licensure shall be granted or may be denied by the board only for good cause. Failure to advise the board of change of address shall not be considered a basis for reinstatement.

(7) Fees collected under the provisions of this section shall be used by the board to defray expenses of administering the licensure provisions of Title 73, Chapter 27, Mississippi Code of 1972, and to support a program to aid impaired podiatrists in an amount determined by the board.

(8) In order for a podiatrist whose podiatric medical license has been expired for five (5) years or more to qualify for reinstatement of license, the podiatrist must have successfully been cleared for reinstatement through an investigation that shall consist of a determination as to good moral character and verification that the prospective licensee is not guilty of or in violation of any statutory ground for denial of licensure as set forth in Section 73-27-13. To assist the board in conducting its licensure investigation, all applicants shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose.

Any and all state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

The board shall provide to the department the fingerprints of the applicant, any additional information that may be required by the department, and a form signed by the applicant consenting to the check of the criminal records and to the use of the fingerprints and other identifying information required by the state or national repositories.

The board shall charge and collect from the applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant.

SOURCES: Laws, 1975, ch. 363; Laws, 1979, ch. 439, § 4; Laws, 1980, ch. 458, § 27; Laws, 1982, ch. 309, § 2; Laws, 1989, ch. 315, § 4; Laws, 1999, ch. 338, § 1; Laws, 2000, ch. 556, § 2; Laws, 2004, ch. 553, § 2; Laws, 2007, ch. 309, § 22; Laws, 2007, ch. 506, § 5; Laws, 2008, ch. 551, § 2, eff from and after July 1, 2008.

Joint Legislative Committee Note — Section 22 of ch. 309, Laws of 2007, effective upon passage (approved March 8, 2007), amended this section. Section 5 of ch. 506, Laws of 2007, effective July 1, 2007 (approved March 30, 2007), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the June 26, 2007, meeting of the Committee.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

Criminal history record checks and fingerprinting for health care professional/vocational technical students, see § 37-29-232.

Criminal history record checks and fingerprinting required for new employees providing direct patient care at University of Mississippi Medical Center, see § 37-115-41.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Criminal history record checks and fingerprinting required for applicants for medical licensure, physician assistant licensure, osteopathic licensure, and podiatric licensure, and on applicants for reinstatement of a license, see §§ 73-25-3, 73-25-14, 73-25-32, 73-26-3, and 73-27-5.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR. Podiatry or chiropody statutes: validity, construction, and application. 45 A.L.R.4th 888.

§ 73-27-13. Refusal to issue license; suspension; revocation [Paragraph (1)(j) repealed effective July 1, 2020].

(1) The State Board of Medical Licensure may refuse to issue, suspend, revoke or otherwise restrict any license provided for in this chapter, with the advice of the advisory committee, based upon the following grounds:

(a) Habitual personal use of narcotic drugs, or any other drug having addiction-forming or addiction-sustaining liability.

(b) Habitual use of intoxicating liquors, or any beverage, to an extent which affects professional competency.

(c) Administering, dispensing or prescribing any narcotic drug, or any other drug having addiction-forming or addiction-sustaining liability otherwise than in the course of legitimate professional practice.

(d) Conviction of violation of any federal or state law regulating the possession, distribution or use of any narcotic drug or any drug considered a controlled substance under state or federal law.

(e) Performing any medical diagnosis or treatment outside the scope of podiatry as defined in Section 73-27-1.

(f) Conviction of a felony or misdemeanor involving moral turpitude.

(g) Obtaining or attempting to obtain a license by fraud or deception.

(h) Unprofessional conduct, which includes, but is not limited to:

(i) Practicing medicine under a false or assumed name or impersonating another practitioner, living or dead.

(ii) Knowingly performing any act which in any way assists an unlicensed person to practice podiatry.

(iii) Making or willfully causing to be made any flamboyant claims concerning the licensee's professional excellence.

(iv) Being guilty of any dishonorable or unethical conduct likely to deceive, defraud or harm the public.

(v) Obtaining a fee as personal compensation or gain from a person on fraudulent representation a disease or injury condition generally considered incurable by competent medical authority in the light of current scientific knowledge and practice can be cured or offering, undertaking, attempting or agreeing to cure or treat the same by a secret method, which he refuses to divulge to the board upon request.

(vi) Use of any false, fraudulent or forged statement or document, or the use of any fraudulent, deceitful, dishonest or immoral practice in connection with any of the licensing requirements, including the signing in his professional capacity any certificate that is known to be false at the time he makes or signs such certificate.

(vii) Failing to identify a podiatrist's school of practice in all professional uses of his name by use of his earned degree or a description of his school of practice.

(i) The refusal of a licensing authority of another state to issue or renew a license, permit or certificate to practice podiatry in that state or the revocation, suspension or other restriction imposed on a license, permit or certificate issued by such licensing authority which prevents or restricts practice in that state.

(j) Violation(s) of the provisions of Sections 41-121-1 through 41-121-9 relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2020.

(2) Upon the nonissuance, suspension or revocation of a license to practice podiatry, the board may, in its discretion and with the advice of the advisory committee, reissue a license after a lapse of six (6) months. No advertising shall be permitted except regular professional cards.

(3) In its investigation of whether the license of a podiatrist should be suspended, revoked or otherwise restricted, the board may inspect patient records in accordance with the provisions of Section 73-25-28.

(4) In addition to the grounds specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Codes, 1942, § 8900; Laws, 1938, ch. 189; Laws, 1979, ch. 413; Laws, 1980, ch. 458, § 28; Laws, 1987, ch. 500, § 7; Laws, 1996, ch. 507, § 59; Laws, 1998, ch. 389, § 2; Laws, 2012, ch. 409, § 11; Laws, 2016, ch. 419, § 14, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment extended the repealer for paragraph (1)(j) by substituting "July 1, 2020" for "July 1, 2016" at the end of (1)(j).

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Uniform controlled substances law, generally, see §§ 41-29-101 et seq.

Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Reinstatement of revoked or suspended licenses, see § 73-27-16.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

ALR. Podiatry or chiropody statutes: validity, construction, and application. 45 A.L.R.4th 888.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Medical malpractice: measure and elements of damages in actions based on loss of chance. 81 A.L.R.4th 485.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 36, 65 et seq., 71 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 55 et seq.

§ 73-27-15. Practicing without license.

It shall be unlawful for any person to profess to be a podiatrist, to practice or assume the duties incident to podiatry without first obtaining from the Mississippi State Board of Medical Licensure a license authorizing the practice of podiatry in this state, except as otherwise provided by this chapter.

SOURCES: Codes, 1942, § 8901; Laws, 1938, ch. 189; Laws, 1980, ch. 458, § 29; Laws, 1997, ch. 338, § 2, eff from and after July 1, 1997.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Podiatry defined, see § 73-27-1.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

Injunctions to restrain illegal practice of profession, see § 73-51-1.

RESEARCH REFERENCES

ALR. Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts without a license as a separate or continuing offense. 99 A.L.R.2d 654.

Podiatry or chiropody statutes: validity, construction, and application. 45 A.L.R.4th 888.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 36, 106 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 43-51.

§ 73-27-16. Reinstatement of revoked or suspended licenses.

(1) A person whose license to practice podiatry has been revoked or suspended may petition the Mississippi State Board of Medical Licensure to reinstate this license after a period of not less than one (1) year has elapsed from the date of the revocation or suspension. The procedure for the reinstatement of a license that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(2) The petition shall be accompanied by two (2) or more verified recommendations from podiatrists licensed by the Board of Medical Licensure to which the petition is addressed and by two (2) or more recommendations from citizens each having personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed and such facts as may be required by the board.

The petition may be heard at the next regular meeting of the Board of Medical Licensure but not earlier than thirty (30) days after the petition was filed. No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which he is under probation or parole. The hearing may be continued from time to time as the Board of Medical Licensure finds necessary. Any final action by the board on a petition under this section shall be made with the advice of the advisory committee.

(3) In determining whether the disciplinary penalty should be set aside and the terms and conditions, if any, which should be imposed if the disciplinary penalty is set aside, the Board of Medical Licensure may investigate and consider all activities of the petitioner since the disciplinary action was taken against him, the offense for which he was disciplined, his activity during the time his certificate was in good standing, his general reputation for truth, professional ability and good character; and it may require the petitioner to pass an oral examination.

(4) The Secretary-Treasurer of the Board of Medical Licensure shall enter into his records of the case all actions of the Board of Medical Licensure in setting aside a disciplinary penalty under this section and he shall certify notices to the proper court clerk. The clerk shall make such changes on his records as may be necessary.

SOURCES: Laws, 1975, ch. 364; Laws, 1980, ch. 458, § 30; Laws, 1996, ch. 507, § 60; Laws, 1998, ch. 389, § 3, eff from and after July 1, 1998.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Grounds for refusal to issue license, suspension or revocation of license, see § 73-27-13.

Penalties, see § 73-27-17.
State Board of Medical Licensure, see §§ 73-43-1 et seq.
Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

ALR. Podiatry or chiropody statutes: validity, construction, and application. 45 A.L.R.4th 888.

§ 73-27-17. Penalty.

Any person who shall violate any of the provisions of this chapter shall, on conviction, of the first offense, be punished by a fine of not more than one hundred dollars ($100.00) or by imprisonment in the county jail not more than three (3) months or both; and such person, upon conviction of the second offense against this chapter, shall be punished by a fine of not less than two hundred dollars ($200.00) or more than five hundred dollars ($500.00) or by imprisonment in the penitentiary not less than one (1) year or more than two (2) years; and such person, upon conviction of any succeeding offense, shall be punished in the discretion of the court; provided, however, that such punishment shall in no case exceed the payment of a fine of five thousand dollars ($5,000.00) or imprisonment for five years.

SOURCES: Codes, 1942, § 8902; Laws, 1938, ch. 189.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

Application of penalties for practicing podiatry during time license is lapsed after failure to renew timely, see § 73-27-12.

RESEARCH REFERENCES

ALR. Podiatry or chiropody statutes: validity, construction, and application. 45 A.L.R.4th 888.

§ 73-27-19. Exceptions.

This chapter shall not apply to physicians or surgeons licensed to practice medicine or osteopathy in the State of Mississippi, nor to physicians or surgeons of the United States Army, Navy or the United States Public Health Service, when in actual performance of their duties or to legally registered podiatrists of another state taking charge of the practice of a locally registered podiatrist of this state, temporarily during the latter's absence therefrom, by written permission of the Secretary of the State Board of Medical Licensure.

SOURCES: Codes, 1942, § 8903; Laws, 1938, ch. 189; Laws, 1980, ch. 458, § 31; Laws, 1997, ch. 338, § 3, eff from and after July 1, 1997.

Cross References — Implied waiver of medical privilege of patient to extent of any information other than that which would identify patient, see § 13-1-21.

Exception from the requirement that sealed hospital records be opened only at time of trial, deposition, or other hearing, and in the presence of all parties, with respect to physician or podiatrist disciplinary proceedings, see § 41-9-107.

Licensure of physicians, see §§73-25-1 et seq.

Certain patient records, charts and other documents being subject to subpoena by the board of medical licensure for use in disciplinary proceedings initiated pursuant to the provisions of this section, see § 73-25-28.

State Board of Medical Licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

ALR. Podiatry or chiropody statutes: validity, construction, and application. 45 A.L.R.4th 888.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers § 36.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers § 13.

CHAPTER 29

Polygraph Examiners

Sec.
73-29-1. Short title.
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73-29-25. License; issuance; display.
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73-29-43. Procedure for enjoining violations of chapter.
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73-29-47. Admission of polygraphs in evidence.
73-29-49. Repealed.

§ 73-29-1. Short title.

This chapter shall be known, and may be cited, as "the Polygraph Examiners Law."

SOURCES: Codes, 1942, § 8920-61; Laws, 1968, ch. 380, § 1; reenacted, Laws, 1980, ch. 500, § 1; reenacted, Laws, 1993, ch. 351, § 1, eff from and after passage (approved March 12, 1993).

RESEARCH REFERENCES

ALR. Admissibility of lie detector test results, or of offer or refusal to take test, in attorney disciplinary proceeding. 79 A.L.R.4th 576.

§ 73-29-3. Definitions.

In this chapter, unless the context requires a different definition:

"Board" means the polygraph examiners board;

"Secretary" means that member of the polygraph examiners board selected by the board to act as secretary;

"Internship" means the study of polygraph examinations and of the administration of polygraph examinations by a trainee under the personal supervision and control of a polygraph examiner in accordance with a course of study prescribed by the board at the commencement of such internship;

"Person" means any natural person, firm, association, copartnership, or corporation; and

"Polygraph examiner" means any person who uses any device or instrument to test or question individuals for the purpose of verifying truth of statements.

SOURCES: Codes, 1942, § 8920-62; Laws, 1968, ch. 380, § 2; reenacted, Laws, 1980, ch. 500, § 2; reenacted, Laws, 1993, ch. 351, § 2, eff from and after passage (approved March 12, 1993).

§ 73-29-5. Use of certain instrument required.

Every polygraph examiner shall use an instrument which records visually, permanently, and simultaneously: (1) a subject's cardiovascular pattern and (2) a subject's respiratory pattern. Patterns of other physiological changes in addition to (1) and (2) may also be recorded.

SOURCES: Codes, 1942, § 8920-63; Laws, 1968, ch. 380, § 3; reenacted, Laws, 1980, ch. 500, § 3; reenacted, Laws, 1993, ch. 351, § 3, eff from and after passage (approved March 12, 1993).

ATTORNEY GENERAL OPINIONS

State law does not permit the use of the Psychological Stress Evaluation and Computerized Voice Stress Test testing instruments by themselves as a method of lie detection; however, Section 73-29-5 would permit these instruments to be used as an addition to a testing instrument that does meet the requirements of the statute. Waggoner, Nov. 15, 2002, A.G. Op. #02-0661.

§ 73-29-7. Polygraph examiners board established; members; term of office; organization.

(1) There is hereby established a Polygraph Examiners Board consisting of three (3) members who shall be citizens of the United States and residents of the state for at least two (2) years prior to appointment and at the time of appointment are active polygraph examiners. No two (2) board members may be employed by the same person or agency. At least one (1) member must be a qualified examiner of a governmental law enforcement agency, and shall be the supervisor of the polygraph section of the Department of Public Safety, and at least one (1) member must be a qualified polygraph examiner in the commercial field. The members shall be appointed by the Governor of the State of Mississippi with the advice and consent of the Senate for a term of six (6) years. The terms of office of members appointed to the initial board are one (1) for two

(2) years; one (1) for four (4) years; and one (1) for six (6) years. Any vacancy in an unexpired term shall be filled by appointment of the Governor with the advice and consent of the Senate for the unexpired term.

(2) The board shall elect a chairman, vice chairman and secretary from among its members.

(3) The vote of a majority of the board members is sufficient for passage of any business or proposal which comes before the board.

(4) The members of the board shall receive Twenty-two Dollars and Fifty Cents ($22.50) per diem for each day spent in the actual discharge of their duties.

(5) The Department of Public Safety is hereby authorized to provide the board with an appropriate office and such administrative and clerical services as may be necessary to carry out the board's responsibilities, including investigative and testing services, budgetary support and such other services and support deemed appropriate by the Commissioner of Public Safety.

SOURCES: Codes, 1942, § 8920-64; Laws, 1968, ch. 380, § 4; reenacted and amended, Laws, 1980, ch. 500, § 4; reenacted, Laws, 1993, ch. 351, § 4; amended, Laws, 1994, ch. 452, § 1, eff from and after July 1, 1994.

Cross References — General powers and duties of governor, see § 7-1-5.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 58, 59.

§ 73-29-9. Board to issue regulations; proof of members' signatures and qualification to act; fees; annual report.

(1) The board shall issue regulations consistent with the provisions of this chapter for the administration and enforcement of this chapter and shall prescribe forms which shall be issued in connection therewith.

(2) An order or a certified copy thereof, over the board seal and purporting to be signed by the board members, shall be prima facie proof that the signatures are the genuine signatures of the board members, and that the board members are fully qualified to act.

(3) All fees collected under the provisions of this chapter shall be paid to the Treasurer of the State of Mississippi. Funds necessary for the enforcement of this chapter and the administration of its provisions shall be appropriated by the Legislature to the Department Public Safety, but the funds so appropriated for a fiscal year shall not exceed the total amount of the fees which it is anticipated will be collected hereunder during such fiscal year, plus the amount of funds which were unexpended by the board for the next preceding fiscal year.

(4) The board shall, prior to November 1 of each year, submit to the Attorney General of Mississippi and the Legislature, a detailed, written report on all the activities of the board and all expenditures made by it during the preceding fiscal year ending June 30.

SOURCES: Codes, 1942, § 8920-65; Laws, 1968, ch. 380, § 5; Laws, 1970, ch. 472; reenacted and amended, Laws, 1980, ch. 500, § 5; reenacted, Laws, 1993, ch. 351, § 5; amended, Laws, 1994, ch. 452, § 2, eff from and after July 1, 1994.

§ 73-29-11. Unlicensed person not to administer polygraph examinations.

It shall be unlawful for any person, including a city, county or state employee, to administer polygraph examinations or attempt to hold himself out as a polygraph examiner without a license approved by the board and issued by the board.

SOURCES: Codes, 1942, § 8920-66; Laws, 1968, ch. 380, § 6; reenacted, Laws, 1980, ch. 500, § 6; reenacted, Laws, 1993, ch. 351, § 6, eff from and after passage (approved March 12, 1993).

Cross References — Injunctive relief under this chapter, see § 73-29-43.
Injunctions to restrain illegal practice of profession, see § 73-51-1.

RESEARCH REFERENCES

ALR. Validity and construction of statutes licensing or otherwise regulating operators of polygraph or similar devices. 32 A.L.R.3d 1324.

§ 73-29-13. Qualifications for license; surety bond.

A person is qualified to receive a license as an examiner:

(1) Who is at least twenty-one (21) years of age;

(2) Who is a citizen of the United States;

(3) Who establishes that he is a person of honesty, truthfulness, integrity, and moral fitness;

(4) Who has not been convicted of a felony or a misdemeanor involving moral turpitude;

(5) Who holds a baccalaureate degree from a college or university accredited by the American Association of Collegiate Registrars and Admissions Officers or, in lieu thereof, has five (5) consecutive years of active investigative experience immediately preceding his application;

(6) Who is a graduate of a polygraph examiners course approved by the board and has satisfactorily completed not less than six (6) months of internship training, provided that if the applicant is not a graduate of an approved polygraph examiners course, satisfactory completion of not less than twelve (12) months of internship training may satisfy this subdivision; and

(7) Prior to the issuance of a license, the applicant must furnish to the board evidence of a surety bond or insurance policy. Said surety bond or insurance policy shall be in the sum of five thousand dollars ($5,000.00) and shall be conditioned that the obligor therein will pay to the extent of the face amount of such surety bond or insurance policy all judgments which may be

recovered against the licensee by reason of any wrongful or illegal acts committed by him in the course of his examinations.

SOURCES: Codes, 1942, § 8920-67; Laws, 1968, ch. 380, § 7; reenacted, Laws, 1980, ch. 500, § 7; reenacted, Laws, 1993, ch. 351, § 7, eff from and after passage (approved March 12, 1993).

Cross References — Grounds for refusal to issue or renew license or for revocation or for revocation or suspension of license, see § 73-29-31.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

CJS. 53 C.J.S., Licenses §§ 58, 59 et seq.

§ 73-29-15. Original applications for licenses.

Applications for original licenses shall be made to the secretary of the board in writing under oath on forms prescribed by the board, to which forms must be affixed the applicant's fingerprints and a recent photograph, and shall be accompanied by the required fee which is not refundable. Any such application shall require such information as in the judgment of the board will enable it to pass on the qualifications of the applicant for a license.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 8920-69; Laws, 1968, ch. 380, § 9; reenacted, Laws, 1980, ch. 500, § 8; reenacted, Laws, 1993, ch. 351, § 8; Laws, 1997, ch. 588, § 54, eff from and after July 1, 1997.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Fees, see § 73-29-23.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 70-72.

§ 73-29-17. Nonresident applicants; qualifications; requirements as to service of process.

(a) Each nonresident applicant for an original license or a renewal license shall file with the board an irrevocable consent that actions against said applicant may be filed in any appropriate court of any county or municipality of this state in which the plaintiff resides or in which some part of the transaction occurred out of which the alleged cause of action arose and that process on any such action may be served on the applicant by leaving two (2) copies thereof with the secretary. Such consent shall stipulate and agree that such service of process shall be taken and held to be valid and binding for all purposes. The secretary of the board shall send forthwith one (1) copy of the process to the applicant at the address shown on the records of the board by registered or certified mail.

(b) Nonresident applicants must satisfy the requirements of Section 73-29-13, and furnish also a recent photograph and fingerprints.

SOURCES: Codes, 1942, § 8920-70; Laws, 1968, ch. 380, § 10; reenacted, Laws, 1980, ch. 500, § 9; reenacted, Laws, 1993, ch. 351, § 9, eff from and after passage (approved March 12, 1993).

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 70-72.

§ 73-29-19. Licensing of examiners licensed under laws of other states.

An applicant who is a polygraph examiner licensed under the laws of another state or territory of the United States may be issued a license upon payment of a fee of Fifty Dollars ($50.00) and the production of satisfactory proof that:

(1) He is at least twenty-one (21) years of age;

(2) He is a citizen of the United States;

(3) He is of good moral character;

(4) The requirements for the licensing of polygraph examiners in such particular state or territory of the United States were, at the date of the applicant's licensing therein, substantially equivalent to the requirements now in force in this state;

(5) The applicant had lawfully engaged in the administration of polygraph examinations under the laws of such state or territory for at least two (2) years prior to his application for license hereunder;

(6) Such other state or territory grants similar reciprocity to license holders of this state; and

(7) He has complied with Section 73-29-17.

The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Codes, 1942, § 8920-71; Laws, 1968, ch. 380, § 11; reenacted, Laws, 1980, ch. 500, § 10; reenacted, Laws, 1993, ch. 351, § 10; Laws, 2013, ch. 350, § 27, eff from and after July 1, 2013.

Comparable Laws from other States — Alabama: Code of Ala. § 34-25-24.
Arkansas: A.C.A. § 17-39-205.
Louisiana: La. R.S. § 37:2842.
South Carolina: S.C. Code Ann.§ 40-53-110.
Tennessee: Tenn. Code Ann. § 62-27-109.

§ 73-29-21. Internship license.

(a) Upon approval by the board, the secretary shall issue an internship license to a trainee provided he applies for such license and pays the required fee within ten (10) days prior to the commencement of his internship. The application shall contain such information as may be required by the board.

(b) An internship license shall be valid for the term of twelve (12) months from the date of issue. Such license may be extended or renewed for any term not to exceed six (6) months upon good cause shown to the board.

(c) A trainee shall not be entitled to hold an internship license after the expiration of the original twelve-month period and six-month extension if such extension is granted by the board until twelve (12) months after the date of expiration of the last internship license held by said trainee.

(d) If a polygraph examiner is not available to personally supervise a trainee in the internship program, then a member of the board shall supervise and sponsor the trainee.

SOURCES: Codes, 1942, § 8920-72; Laws, 1968, ch. 380, § 12; reenacted and amended, Laws, 1980, ch. 500, § 11; reenacted, Laws, 1993, ch. 351, § 11, eff from and after passage (approved March 12, 1993).

Cross References — Fees for internship license, see § 73-29-23.

§ 73-29-23. Fees.

The fee to be paid for an original polygraph examiner's license is fifty dollars ($50.00).

The fee to be paid for an internship license is thirty dollars ($30.00).

The fee to be paid for the issuance of a duplicate polygraph examiner's license is ten dollars ($10.00).

The fee to be paid for a polygraph examiner's renewal license is fifty dollars ($50.00).

The fee to be paid for the extension or renewal of an internship license is twenty-five dollars ($25.00).

The fee to be paid for a duplicate internship license is ten dollars ($10.00).

The fees required by this chapter may be paid by the governmental agency employing the examiner.

SOURCES: Codes, 1942, § 8920-73; Laws, 1968, ch. 380, § 13; reenacted and amended, Laws, 1980, ch. 500, § 12; reenacted, Laws, 1993, ch. 351, § 12, eff from and after passage (approved March 12, 1993).

§ 73-29-25. License; issuance; display.

A license or duplicate license must be prominently displayed at the place of business of the polygraph examiner or at the place of internship. Each license shall be signed by the board members and shall be issued under the seal of the board.

SOURCES: Codes, 1942, § 8920-74; Laws, 1968, ch. 380, § 14; reenacted, Laws, 1980, ch. 500, § 13; reenacted, Laws, 1993, ch. 351, § 13, eff from and after passage (approved March 12, 1993).

Cross References — Fees for original polygraph examiner's license or issuance of duplicate license, see § 73-29-23.

§ 73-29-27. Examiner to give notice of change of business address.

Notice in writing shall be given to the secretary by the licensed polygraph examiner of any change of principal business location within thirty (30) days of the time he changes the location. A change of business location without notification to the secretary shall automatically suspend the license theretofore issued.

SOURCES: Codes, 1942, § 8920-75; Laws, 1968, ch. 380, § 15; reenacted, Laws, 1980, ch. 500, § 14; reenacted, Laws, 1993, ch. 351, § 14, eff from and after passage (approved March 12, 1993).

§ 73-29-29. Term of license; renewal.

Except as provided in Section 33-1-39, each polygraph examiner's license shall be issued for the term of one (1) year and shall, unless suspended or revoked, be renewed annually as prescribed by the board; provided, however, that licenses issued from and after July 1, 1994, shall be issued for terms of two (2) years and shall, unless suspended or revoked, be renewed as prescribed by the board. No license shall be renewed unless the board receives satisfactory proof of such continuing education as it by regulation requires.

SOURCES: Codes, 1942, § 8920-76; Laws, 1968, ch. 380, § 16; reenacted, Laws, 1980, ch. 500, § 15; reenacted, Laws, 1993, ch. 351, § 15; Laws, 1994, ch. 452, § 3; Laws, 2007, ch. 309, § 23, eff from and after passage (approved Mar. 8, 2007.)

Cross References — Fees for polygraph examiner's renewal license, see § 73-29-23.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 80, 82 et seq.

§ 73-29-31. Grounds for refusal to issue or renew license, or for revocation or suspension.

(1) The board may refuse to issue or may suspend or revoke a license on any one or more of the following grounds:

(a) For failing to inform a subject to be examined as to the nature of the examination;

(b) For failing to inform a subject to be examined that his participation in the examination is voluntary;

(c) Material misstatement in the application for original license or in the application for any renewal license under this chapter;

(d) Willful disregard or violation of this chapter or of any regulation or rule issued pursuant thereto, including, but not limited to, willfully making a false report concerning an examination for polygraph examination purposes;

(e) If the holder of any license has been adjudged guilty of the commission of a felony or a misdemeanor involving moral turpitude;

(f) Making any willful misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or trainees;

(g) Having demonstrated unworthiness or incompetency to act as a polygraph examiner as defined by this chapter;

(h) Allowing one's license under this chapter to be used by any unlicensed person in violation of the provisions of this chapter;

(i) Willfully aiding or abetting another in the violation of this chapter or any regulation or rule issued pursuant thereto;

(j) Where the license holder has been adjudged by a court of competent jurisdiction as habitual drunkard, mentally incompetent, or in need of a conservator;

(k) Failing, within a reasonable time, to provide information requested by the secretary as the result of a formal complaint to the board which would indicate a violation of this chapter;

(*l*) Failing to inform the subject of the results of the examination if so requested; or

(m) With regard to any polygraph examiner employed for a fee and not employed by a governmental law enforcement agency or the Mississippi Department of Corrections:

(i) Requiring a subject, prior to taking the examination or as a condition of receiving the results of the examination, to waive any rights or causes of action he may have or which may accrue in favor of the subject arising out of or resulting from the administration of the examination; except the examiner may require, prior to the examination or as a condition of receiving the results of the examination, a subject to waive any rights or causes of action that may accrue against the examiner as a result of any use made of the results of the examination by the person who employed the examiner;

(ii) Requiring a subject to acknowledge that his examination is not done for purposes of employment when, in fact, the results of the examination are to be submitted to an employer or an agent of an employer; or

(iii) Reporting the results of an examination to any person not authorized to receive the results of the examination except for the person who employed the examiner, unless authorized in writing by the subject.

(2) In addition to the grounds specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Codes, 1942, § 8920-77; Laws, 1968, ch. 380, § 17; reenacted and amended, Laws, 1980, ch. 500, § 16; reenacted, Laws, 1993, ch. 351, § 16; Laws, 1996, ch. 507, § 61, eff from and after July 1, 1996.

Cross References — Proceedings for suspension or revocation of license, § 73-29-37.

Judicial review of boards action, see § 73-29-39.

Surrender of revoked or suspended license, see § 73-29-41.

Penalties, see § 73-29-45.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 37 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-29-33. Effect of unlawful act of employee examiner or trainee on employer of such examiner or trainee.

Any unlawful act or violation of any of the provisions of this chapter on the part of any polygraph examiner or trainee shall not be cause for revocation of the license of any other polygraph examiner for whom the offending examiner or trainee may have been employed, unless it shall appear to the satisfaction of the board that the polygraph examiner-employer has wilfully or negligently aided or abetted the illegal actions or activities of the offending polygraph examiner or trainee.

SOURCES: Codes, 1942, § 8920-78; Laws, 1968, ch. 380, § 18; reenacted, Laws, 1980, ch. 500, § 17; reenacted, Laws, 1993, ch. 351, § 17, eff from and after passage (approved March 12, 1993).

RESEARCH REFERENCES

ALR. Employee's action in tort against party administering polygraph, drug, or similar test at request of actual or prospective employer. 89 A.L.R.4th 527.

§ 73-29-35. Examiner to register with secretary of state and circuit clerks.

Each polygraph examiner shall register with the secretary of state of the State of Mississippi and with the circuit clerk in the county wherein he maintains a business address. The circuit clerk of each county shall maintain a list of all polygraph examiners registered in his county.

SOURCES: Codes, 1942, § 8920-79; Laws, 1968, ch. 380, § 19; reenacted, Laws, 1980, ch. 500, § 18; reenacted, Laws, 1993, ch. 351, § 18, eff from and after passage (approved March 12, 1993).

§ 73-29-37. Proceedings for suspension or revocation of license.

(a) When there is cause to refuse an application or to suspend or revoke the license of any polygraph examiner, the board shall, not less than thirty (30) days before refusal, suspension, or revocation action is taken, notify such person in writing, in person, or by certified mail at the last address supplied to the board by such person, of such impending refusal, suspension, or revocation, the reasons therefor, and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the board. If, within twenty (20) days after the personal service of such notice or such notice has been deposited in the United States mail, such person has not made a written request to the board for this administrative hearing, the board is authorized to suspend or revoke the polygraph examiner's license of such person without a hearing. Upon receipt by the board of such written request of such person within the twenty-day period as set out above, an opportunity for an administrative hearing shall be afforded as early as is practicable. In no case shall the hearing be held less than ten (10) days after written notification thereof, including a copy of the charges, shall have been given the person by personal service or by certified mail sent to the last address supplied to the board by the applicant or licensee. The administrative hearing in such cases shall be before the board.

(b) The board shall conduct the administrative hearings and it is authorized to administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, documents, etc. On the basis of the evidence submitted at the hearing, the board shall take whatever action it deems necessary in refusing the application or suspending or revoking the license.

SOURCES: Codes, 1942, § 8920-80; Laws, 1968, ch. 380, § 20; reenacted, Laws, 1980, ch. 500, § 19; reenacted, Laws, 1993, ch. 351, § 19, eff from and after passage (approved March 12, 1993).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 37 et seq.

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-29-39. Judicial review of board's action.

Any person dissatisfied with the action of the board in refusing his application or suspending or revoking his license, or any other action of the board, may appeal the action of the board by filing a petition within thirty (30) days thereafter in the circuit court in the county where the person resides or in the Circuit Court of Hinds County, Mississippi, and the court is vested with jurisdiction and it shall be the duty of the court to set the matter for hearing upon ten (10) days' written notice to the board and the attorney representing the board. The court in which the petition of appeal is filed shall determine whether or not a cancellation or suspension of a license shall be abated until the hearing shall have been consummated with final judgment thereon or whether any other action of the board should be suspended pending hearing, and enter its order accordingly, which shall be operative when served upon the board, and the court shall provide the attorney representing the board with a copy of the petition and order. Except as otherwise authorized in Section 7-5-39, the board shall be represented in such appeals by the district or county attorney of the county or the Attorney General, or any of their assistants. The board shall initially determine all facts, but the court upon appeal shall set aside the determination of the board if the board's determination (1) is not based upon substantial evidence upon the entire record; (2) is arbitrary or capricious; (3) is in violation of statutory requirements; or (4) was made without affording to licensee or applicant due process of law.

Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SOURCES: Codes, 1942, § 8920-81; Laws, 1968, ch. 380, § 21; reenacted, Laws, 1980, ch. 500, § 20; reenacted, Laws, 1993, ch. 351, § 20; Laws, 1996, ch. 507, § 62; Laws, 2012, ch. 546, § 36, eff from and after July 1, 2012.

Cross References — Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 53, 54.

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-29-41. Surrender of revoked or suspended license.

Upon the revocation or suspension of any license, the licensee shall forthwith surrender the license or licenses to the secretary; failure of a licensee to do so shall be a violation of this chapter and upon conviction, shall be subject to the penalties hereinafter set forth. At any time after the suspension or revocation of any license, the secretary shall restore it to the former licensee, upon the written recommendations of the board.

SOURCES: Codes, 1942, § 8920-82; Laws, 1968, ch. 380, § 22; reenacted, Laws, 1980, ch. 500, § 21; reenacted, Laws, 1993, ch. 351, § 21, eff from and after passage (approved March 12, 1993).

§ 73-29-43. Procedure for enjoining violations of chapter.

If any person violates any provisions of this chapter, the secretary shall, upon direction of a majority of the board, in the name of the State of Mississippi, through the Attorney General of the State of Mississippi, except as otherwise authorized in Section 7-5-39, apply in any chancery court of competent jurisdiction, for an order enjoining such violation or for an order enforcing compliance with this chapter. Upon the filing of a verified petition in the court, the court, or any judge thereof, if satisfied by affidavit or otherwise that the person has violated this chapter, may issue a temporary injunction, without notice or bond, enjoining such continued violation and if it is established that the person has violated or is violating this chapter, the court, or any judge thereof, may enter a decree perpetually enjoining the violation or enforcing compliance with this chapter. In case of violation of any order or decree issued under the provisions of this section, the court, or any judge thereof, may try and punish the offender for contempt of court. Proceedings under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this chapter.

SOURCES: Codes, 1942, § 8920-83; Laws, 1968, ch. 380, § 23; reenacted, Laws, 1980, ch. 500, § 22; reenacted, Laws, 1993, ch. 351, § 22; Laws, 2012, ch. 546, § 37, eff from and after July 1, 2012.

Cross References — Injunctions to restrain illegal practice of profession, see § 73-51-1.

ATTORNEY GENERAL OPINIONS

The Mississippi Board of Polygraph Examiners may, through the Attorney General's Office, file an injunction in chancery court to prevent any individual from conducting polygraph examinations in violation of the Polygraph Examiners Law;

additionally, the Board may file criminal charges against any individual who falsely represents that he is a polygraph examiner. Bethea, May 30, 2003, A.G. Op. 03-0253.

§ 73-29-45. Penalties.

Any person who violates any provision of this chapter or any person who falsely states or represents that he has been or is a polygraph examiner or trainee shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) or by imprisonment in the county jail for a term of not to exceed six (6) months, or both.

SOURCES: Codes, 1942, § 8920-84; Laws, 1968, ch. 380, § 24; reenacted, Laws, 1980, ch. 500, § 23; reenacted, Laws, 1993, ch. 351, § 23, eff from and after passage (approved March 12, 1993).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

The Mississippi Board of Polygraph Examiners may, through the Attorney General's Office, file an injunction in chancery court to prevent any individual from conducting polygraph examinations in violation of the Polygraph Examiners Law; additionally, the Board may file criminal charges against any individual who falsely represents that he is a polygraph examiner. Bethea, May 30, 2003, A.G. Op. 03-0253.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. Proof of Facts 3d 627, Violation of Employee Lie Detector Statute.

§ 73-29-47. Admission of polygraphs in evidence.

Nothing in this chapter shall be construed as permitting the results of truth examinations or polygraph examinations to be introduced or admitted as evidence in a court of law.

SOURCES: Codes, 1942, § 8920-85; Laws, 1968, ch. 380, § 25; reenacted and amended, Laws, 1980, ch. 500, § 24; reenacted, Laws, 1993, ch. 351, § 24, eff from and after passage (approved March 12, 1993).

RESEARCH REFERENCES

ALR. Enforceability of agreement by state officials to drop prosecution if accused successfully passes polygraph test. 36 A.L.R.3d 1280.

Admissibility of physiological or psychological truth and deception test or its results to support physician's testimony. 41 A.L.R.3d 1369.

Propriety and prejudicial effect of informing jury that accused has taken polygraph test, where results of tests would be inadmissible in evidence. 88 A.L.R.3d 227.

Admissibility in evidence of confession made by accused in anticipation of, during, or following polygraph examination. 89 A.L.R.3d 230.

Admissibility of polygraph evidence at trial on issue of voluntariness of confession made by accused. 92 A.L.R.3d 1317.

Modern status of rule relating to admission of results of lie detector (polygraph) test in federal criminal trials. 43 A.L.R. Fed. 68.

Admissibility in federal criminal case of results of polygraph (lie detector) test — post Daubert cases. 140 A.L.R. Fed. 525.

§ 73-29-49. Repealed.

Repealed by Laws of 1993, ch. 351, § 25, eff from and after passage (approved March 12, 1993).

[Laws, 1979, ch. 301, § 39; Laws, 1980, ch. 500, § 25; Laws, 1988, ch. 514]

Editor's Note — Former Section 73-29-49 provided for Sections 73-29-1 through 73-29-47, creating the Polygraph Examiners Board and prescribing its powers and duties, to stand repealed as of July 1, 1991.

CHAPTER 30

Licensed Professional Counselors

Sec.
73-30-1. Declaration of policy and legislative intent.
73-30-3. Definitions.
73-30-5. Establishment of state board of examiners; reconstitution of board.
73-30-7. Oath of board members; adoption of rules and regulations; meetings; administration of examinations; investigations by board; exemption of board members from civil liability.
73-30-9. Issuance of licenses.
73-30-11. Denial of license; resubmission of application; appeal.
73-30-13. Adoption of code of ethics.
73-30-15. Reciprocal agreements with other states.
73-30-17. Non-disclosure of information secured during professional consultation; exceptions.
73-30-19. Representation as "Licensed Professional Counselor" by unlicensed person.
73-30-21. Revocation, denial, or suspension of license; reinstatement; injunctions.
73-30-23. Violation of professional ethics; review and sanctions.
73-30-25. Inapplicability of chapter to other regulated professions [Repealed effective July 1, 2019].
73-30-27. Waiver of educational requirements.
73-30-29. License renewal fee; continuing education requirement [Repealed effective July 1, 2020].

§ 73-30-1. Declaration of policy and legislative intent.

It is declared to be the policy of this state that the activities of those persons who render services to the public as licensed professional counselors and use the title "Licensed Professional Counselor" be regulated to ensure the protection of the public health, safety and welfare.

It is the intent of the Legislature to provide for the regulation of the practice of counseling as well as the use of the title "Licensed Professional Counselor" for those who offer services to the public for a fee, monetary or otherwise.

SOURCES: Laws, 1985, ch. 354, § 1, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am Jur. 58 Am. Jur. 2d, Occupations, Trades, and Professions §§ 1 et seq.

§ 73-30-3. Definitions.

The following terms shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Licensed professional counselor" shall mean and is restricted to any person who holds himself out to the public by any title or description of services incorporating the words licensed professional counselor or psychotherapist, and who offers to render professional counseling or psychotherapy services to individuals, groups, organizations, corporations, institutions, government agencies or the general public for a fee, monetary or otherwise, implying that he is licensed.

(b) "Practice of counseling/psychotherapy" shall mean rendering, offering to render or supervising those who render to individuals, groups, organizations, corporations, institutions, government agencies or the general public any service involving the applications of counseling procedures and other related areas of the behavioral sciences to help in learning how to solve problems or make decisions related to personal growth, marriage, family or other interpersonal or intrapersonal concerns.

(c) "Counseling/Psychotherapy procedures" shall mean the application of mental health, psychological or human development principles, through cognitive, affective, behavioral or systematic intervention strategies that address wellness, personal growth or career development, as well as pathology. Counseling/Psychotherapy involves diagnosis, assessment and treatment by use of the following:

(i) Counseling/psychotherapy methods and techniques, both verbal and nonverbal, which require the application of principles, methods or procedures of understanding, predicting and/or influencing behavior, and motivation;

(ii) Informational and community resources for personal or social development;

(iii) Group and/or placement methods and techniques which serve to further the goals of counseling;

(iv) Designing, conducting and interpreting research on human subjects or any consultation on any item above; and

(v) Appraisal techniques including, but not limited to, testing of achievement, abilities, interests, aptitudes and personality.

(d) "Fees for licensed counseling services" shall mean any form of compensation received for the practice of counseling.

(e) "Board" shall mean the Mississippi State Board of Examiners for Licensed Professional Counselors.

SOURCES: Laws, 1985, ch. 354, § 2; Laws, 2008, ch. 494, § 1, eff from and after July 1, 2008.

Cross References — Insurance policy covering mental, nervous or emotional disorders to reimburse for services rendered by duly licensed professional counselor, see § 83-41-211.

§ 73-30-5. Establishment of state board of examiners; reconstitution of board.

(1) There is hereby established the Mississippi State Board of Examiners for Licensed Professional Counselors which shall consist of five (5) members. The initial appointments to the board shall consist of one (1) member from each

of the five (5) congressional districts of Mississippi, who shall be appointed by the Governor with the advice and consent of the Senate. From and after January 1, 2004, the board shall be reconstituted to consist of five (5) members, one (1) member from each of the four (4) congressional districts, as such districts existed on January 1, 2002, and one (1) member to be selected from the state at large, who shall be appointed by the Governor with the advice and consent of the Senate. From and after January 1, 2004, the board shall be reconstituted to consist of five (5) members, one (1) member from each of the four (4) congressional districts, as such districts existed on January 1, 2002, and one (1) member to be selected from the state at large, who shall be appointed by the Governor with the advice and consent of the Senate. A list shall be provided to the Governor by the Mississippi Counseling Association from which the Governor may choose board members. At least two (2) names shall be included from each congressional district. Such appointments shall be made initially within sixty (60) days of the submission of the list of qualified counselors by the Mississippi Counseling Association. Thereafter, all vacancies occurring on the board shall be filled by the Governor within sixty (60) days after the vacancy occurs. The Mississippi Counseling Association shall provide a list of suggested board members for each vacancy.

(2) The board shall consist of five (5) licensed counselors, three (3) of whom are primarily engaged as licensed counselors in private or institutional practice and two (2) who are primarily engaged in teaching, training or research in counseling at the corporate or university level. All members shall be qualified electors of the State of Mississippi.

(3) The initial appointments to the board shall be for staggered terms, to be designated by the Governor at the time of appointment as follows: two (2) members to serve for three (3) years, two (2) members to serve for two (2) years, and one (1) member to serve for one (1) year. When the board is reconstituted on January 1, 2004, all members serving on the board on that date shall continue to serve for a term of five (5) years from the beginning of the term to which he or she was appointed. From and after January 1, 2004, all subsequent appointments shall be for five-year terms. No board member shall succeed himself without waiting a period of at least five (5) years after having served one (1) full five-year term.

(4) There shall be appointed to the board no more than one (1) person who is employed by, or receives compensation from, any one (1) institution, organization or partnership at the time of appointment.

(5) Board members shall be reimbursed for necessary and ordinary expenses and mileage incurred while performing their duties as members of the board, at the rate authorized for public employees, from fees collected for license applications and renewals.

SOURCES: Laws, 1985, ch. 354, § 3; Laws, 2003, ch. 407, § 1, eff from and after Jan. 1, 2004.

ATTORNEY GENERAL OPINIONS

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

§ 73-30-7. Oath of board members; adoption of rules and regulations; meetings; administration of examinations; investigations by board; exemption of board members from civil liability.

(1) The members of the board shall take an oath to perform faithfully the duties of their office. The oath shall be administered by a person qualified by law to administer oaths. Upon taking the oath as board members, the initial members shall be deemed licensed counselors for all purposes under this chapter. Within thirty (30) days after taking the oath of office, the first board appointed under this chapter shall meet for an organizational meeting on call by the Governor. At such meeting and at an organizational meeting in January every odd-numbered year thereafter, the board shall elect from its members a chairman, vice chairman and secretary-treasurer to serve for terms of two (2) years.

(2) The board shall adopt rules and regulations in compliance with the Mississippi Administrative Procedures Law, using the standards of the American Counseling Association as a guide, not inconsistent with this chapter, for the conduct of its business and the carrying out of its duties.

(3) After a person has applied for licensure, no member of the board may supervise such applicant for a fee, nor shall any member vote on any applicant previously supervised by that member.

(4) The board shall hold at least two (2) regular meetings each year, and additional meetings may be held upon the call of the chairman of the board or at the written request of any four (4) members of the board.

(5) The board-approved examination for licensure shall be administered at least once a year. Examinations may be written, oral, situational, or any combination thereof, and shall deal with theoretical and applied fields in counseling. In written examinations, the examinee's name shall not be disclosed to any person grading the examination until that grading is complete.

(6) The board shall be empowered to make reasonable rules and regulations regarding its operation and to receive and disburse revenues derived from application, licensing, examination and renewal fees. All monies received by the board shall be deposited in a special account in the State Treasury to be designated "Board of Examiners for Licensed Professional Counselors Account." This account shall fund all activities of the board.

(7) Upon the filing of a complaint by any citizen of this state with the board against a licensed professional counselor or upon the board's own motion, the board may:

(a) Compel the attendance of witnesses;

(b) Request the production of books, documents and other papers;

(c) Administer oaths to witnesses; and

(d) Hear testimony and receive evidence concerning all matters within its jurisdiction.

(8) The members of the board are hereby individually exempt from any civil liability as a result of any action taken by the board.

SOURCES: Laws, 1985, ch. 354, § 4; Laws, 2003, ch. 407, § 2; Laws, 2008, ch. 494, § 2, eff from and after July 1, 2008.

Cross References — Provisions of the Mississippi Administrative Procedures Law, see § 25-43-1.101 et seq.

Provision that applicant must pass examination in order to be issued license, see § 73-30-9.

ATTORNEY GENERAL OPINIONS

The general regulatory authority granted by Section 73-30-7(2) does not include the power to define a term such as "related counseling field" as used in the statute, to the exclusion of all other definitions, when the Legislature did not define that term. Reeves, June 2, 1995, A.G. Op. #95-0272.

§ 73-30-9. Issuance of licenses.

The board shall issue a license as a licensed professional counselor, without regard to race, religion, sex or national origin, to each applicant who furnishes satisfactory evidence of the following:

(a) The applicant has completed an application on a form prescribed by the board accompanied by a nonrefundable initial licensing fee of One Hundred Dollars ($100.00).

(b) The applicant is at least twenty-one (21) years of age.

(c) The applicant is of good moral character.

(d) The applicant is a resident of or pays income tax in the State of Mississippi, or has an immigration document to verify legal alien work status in the United States. The immigration document must be current and issued by the United States Immigration Bureau.

(e) The applicant is not in violation of any of the provisions of this chapter and the rules and regulations adopted hereunder.

(f) The applicant shall have an earned doctoral degree primarily in counseling, guidance or related counseling field, or have a master's degree or educational specialist's degree from a regionally or nationally accredited college or university program in counselor education or a related counseling program subject to board approval. The master's degree or educational specialist's degree shall consist of a program of not less than sixty (60) acceptable semester hours or ninety (90) acceptable quarter hours. Persons applying for licensure with a master's degree of less than sixty (60) semester hours or ninety (90) quarter hours may complete the additional coursework required without earning an additional degree, provided the coursework is in a regionally or nationally accredited college or university program in counseling or a related field. Proof of same must be submitted in the form of an updated transcript to the board when reapplying for licensure. All applicants shall provide official transcripts of all graduate work.

(g) The applicant must pass the examination approved by the board, as set forth in Section 73-30-7(5).

(h) The applicant has had two (2) years of supervised experience in professional counseling, or its equivalent, acceptable to the board, one (1) year of which may be concurrent with the pursuit of the master's degree program. Applicant shall submit verification of previous employment.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

(i) After January 1, 2008, the board shall require each first-time applicant for licensure and may require applicants for license renewal to apply to the Department of Public Safety for a state and national background check which will include consulting sex offender registries.

SOURCES: Laws, 1985, ch. 354, § 5; Laws, 1997, ch. 588, § 55; Laws, 2008, ch. 494, § 3, eff from and after July 1, 2008.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Denial of license, appeal, see § 73-30-11.

Revocation, denial or suspension of license, see § 73-30-21.

Waiver of educational requirements, see § 73-30-27.

License renewal fee, see § 73-30-29.

Department of Public Safety generally, see §§ 45-1-2 et seq.

ATTORNEY GENERAL OPINIONS

Under Section 73-30-9(f), the sixty and ninety hour requirement does not apply to an applicant with a pertinent doctoral degree. Reeves, June 2, 1995, A.G. Op. #95-0272.

RESEARCH REFERENCES

Am Jur. 58 Am. Jur. 2d, Occupations, Trades, and Professions §§ 1 et seq.

§ 73-30-11. Denial of license; resubmission of application; appeal.

Following a decision by the board not to license, the applicant may request a hearing at the next regularly scheduled meeting of the board. The applicant will be notified of the decision of the majority of the board members within sixty (60) days of the hearing. Upon a final decision by the board not to license, the applicant may (after waiting a period of at least one (1) year) resubmit the application accompanied by new evidence and a nonrefundable application fee of One Hundred Dollars ($100.00) for reconsideration for licensure.

The applicant may appeal the decision of the board to the circuit court of the county of the applicant's residence. Any appeal to the circuit court must be taken within sixty (60) days of the date of the board's decision. An appeal of the decision of the circuit court may be taken to the Mississippi Supreme Court not later than sixty (60) days from the date of the decision by the circuit court.

SOURCES: Laws, 1985, ch. 354, § 6, eff from and after July 1, 1985.

§ 73-30-13. Adoption of code of ethics.

The board shall adopt the code of ethics of The American Counseling Association. The chairman of the board shall file these ethical standards with the Secretary of State.

SOURCES: Laws, 1985, ch. 354, § 7; Laws, 2008, ch. 494, § 4, eff from and after July 1, 2008.

§ 73-30-15. Reciprocal agreements with other states.

The board shall enter into a reciprocal agreement with any state which licenses counselors if the board finds that such state has substantially the same requirements for licensure. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 1985, ch. 354, § 8; Laws, 2013, ch. 350, § 28, eff from and after July 1, 2013.

Comparable Laws from other States — Alabama: Code of Ala. § 34-8A-15.
Arkansas: A.C.A. § 17-27-308.
Florida: Fla. Stat. § 491.006.
Georgia: O.C.G.A. § 43-10A-10.
Louisiana: La. R.S. § 37:1109.
North Carolina: N.C. Gen. Stat. § 90-337.
South Carolina: S.C. Code Ann. § 40-75-260.
Tennessee: Tenn. Code Ann. § 63-22-116

§ 73-30-17. Non-disclosure of information secured during professional consultation; exceptions.

No licensed professional counselor may disclose any information acquired during professional consultation with clients except:

(a) With the written consent of the client or, in the case of death or disability or in the case of a minor, with the written consent of his parent, legal guardian or conservator, or other person authorized by the court to file suit;

(b) When a communication reveals the contemplation of a crime or harmful act, or intent to commit suicide; or

(c) When a person waives the privilege by bringing charges against a licensed professional counselor for breach of privileged communication, or any other charges.

SOURCES: Laws, 1985, ch. 354, § 9, eff from and after July 1, 1985.

§ 73-30-19. Representation as "Licensed Professional Counselor" by unlicensed person.

Any person who represents himself by the title "Licensed Professional Counselor" without having first complied with the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) for each offense.

SOURCES: Laws, 1985, ch. 354, § 10, eff from and after July 1, 1985.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 73-30-21. Revocation, denial, or suspension of license; reinstatement; injunctions.

(1) The board may, after notice and opportunity for a hearing, suspend, revoke or refuse to issue or renew a license or may reprimand the license holder, upon a determination by the board that such license holder or applicant for licensure has:

(a) Been adjudged by any court to be mentally incompetent or have had a guardian of person appointed;

(b) Been convicted of a felony;

(c) Sworn falsely under oath or affirmation;

(d) Obtained a license or certificate by fraud, deceit or other misrepresentation;

(e) Engaged in the conduct of professional counseling in a grossly negligent or incompetent manner;

(f) Intentionally violated any provision of this chapter;

(g) Violated any rules or regulations of the board; or

(h) Aided or assisted another in falsely obtaining a license under this chapter.

(2) No revoked license may be reinstated within twelve (12) months after such revocation. Reinstatement thereafter shall be upon such conditions as the board may prescribe, which may include, without being limited to, successful passing of the examination required by this chapter.

(3) A license certificate issued by the board is the property of the board and must be surrendered on demand.

(4) The chancery court is hereby vested with the jurisdiction and power to enjoin the unlawful practice of counseling and/or the false representation as a

licensed counselor in a proceeding brought by the board or any members thereof or by any citizen of this state.

(5) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1985, ch. 354, § 11; Laws, 1996, ch. 507, § 63, eff from and after July 1, 1996.

Cross References — Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

JUDICIAL DECISIONS

1. Denial of reinstatement.

Denial of an application for reinstatement of a professional counselor license was not arbitrary or capricious as it was based on evidence that the applicant had been convicted of a crime of moral turpitude, his counseling certification had been revoked, he had violated his probation, and he had been indefinitely suspended from federal health care programs. Hale v. Miss. State Bd. of Examiners, 130 So. 3d 1180 (Miss. Ct. App. 2014).

RESEARCH REFERENCES

Am Jur. 58 Am. Jur. 2d, Occupations, Trades, and Professions §§ 1 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

§ 73-30-23. Violation of professional ethics; review and sanctions.

The board shall develop procedures for review of violations of professional ethics. Sanctions, suspension and/or revocation of license will be imposed for violations of professional ethics.

SOURCES: Laws, 1985, ch. 354, § 12, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license.)

§ 73-30-25. Inapplicability of chapter to other regulated professions [Repealed effective July 1, 2019].

It is not the intent of this chapter to regulate against members of other duly regulated professions in this state who do counseling in the normal course of the practice of their own profession. This chapter does not apply to:

(a) Any person registered, certified or licensed by the state to practice any other occupation or profession while rendering counseling services in the performance of the occupation or profession for which he is registered, certified or licensed;

(b) Certified school counselors when they are practicing counseling within the scope of their employment;

(c) Certified vocational counselors when they are practicing vocational counseling within the scope of their employment;

(d) Counselors in postsecondary institutions when they are practicing within the scope of their employment;

(e) Student interns or trainees in counseling pursuing a course of study in counseling in a regionally or nationally accredited institution of higher learning or training institution if activities and services constitute a part of the supervised course of study, provided that such persons be designated a counselor intern;

(f) Professionals employed by regionally or nationally accredited postsecondary institutions as counselor educators when they are practicing counseling within the scope of their employment;

(g) [Deleted]

(h) Duly ordained ministers or clergy while functioning in their ministerial capacity and duly accredited Christian Science practitioners;

(i) Professional employees of regional mental health centers, state mental hospitals, vocational rehabilitation institutions, youth court counselors and employees of the Mississippi Department of Employment Security or other governmental agency so long as they practice within the scope of their employment;

(j) Professional employees of alcohol or drug abuse centers or treatment facilities, whether privately or publicly funded, so long as they practice within the scope of their employment;

(k) Private employment counselors;

(*l*) Any nonresident temporarily employed in this state to render counseling services for not more than thirty (30) days in any year, if in the opinion of the board the person would qualify for a license under this chapter and if the person holds any license required for counselors in his home state or country; and

(m) Any social workers holding a master's degree in social work from a school accredited by the Council on Social Work Education and who do counseling in the normal course of the practice of their own profession.

SOURCES: Laws, 1985, ch. 354, § 13; Laws, 2004, ch. 572, § 47; Laws, 2008, ch. 494, § 5; reenacted without change, Laws, 2008, ch. 30, § 47; reenacted without change, Laws, 2010, ch. 559, § 47; reenacted without change, Laws, 2011, ch. 471, § 48; reenacted without change, Laws, 2012, ch. 515, § 48, eff from and after July 1, 2012.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, and as amended by Laws of 2012, ch. 515, § 58, provides:

"SECTION 60. This act shall stand repealed on July 1, 2019."

RESEARCH REFERENCES

Am Jur. 47 Am. Jur. Trials 271, Clergy Malpractice for Negligent Counseling.

§ 73-30-27. Waiver of educational requirements.

For a period of two (2) years from July 1, 1985, the board shall waive the sixty (60) semester hours/ninety (90) quarter hours requirement of Section 73-30-9(f), and shall grant the appropriate license upon payment of the required fee by any person, subject to board approval, (a) who possesses at least a thirty (30) semester hours/forty-five (45) quarter hours master's degree from a regionally or nationally accredited program in counseling, guidance or related field which is primarily counseling in nature, acceptable to the board, and who is qualified by two (2) years of supervised experience or its equivalent, acceptable to the board, to practice counseling, and (b) who has passed a national counselor certifying examination, or is certified as a counsellor by a national counsel or certifying agency approved by the board.

SOURCES: Laws, 1985, ch. 354, § 14, eff from and after July 1, 1985.

§ 73-30-29. License renewal fee; continuing education requirement [Repealed effective July 1, 2020].

(1) Except as provided in Section 33-1-39, the renewal of license fee under this chapter shall be Two Hundred Dollars ($200.00) per biennial licensing renewal period. License renewal fees may be increased by the board as deemed necessary, but may not be increased by more than ten percent (10%) of the previous year's fee.

(2) From and after January 1, 2004, a licensed professional counselor must complete twelve (12) hours of continuing education before a license may be renewed. Continuing education courses must be in the field in which the counselor practices. A minimum of three (3) hours of continuing education

must be in the field of professional ethics. The board may determine which continuing education courses are admissible, and the decisions of the board are final. Courses submitted for other certification processes will be admissible. The board must adhere to the guidelines as provided by the National Board of Certified Counselors with regard to credit for teaching courses, workshops and serving on boards.

(3) All licenses will be renewed biennially on or before June 30 of the applicable year. The evidence of the following must be received in the Office of the State Board of Examiners for Licensed Professional Counselors on or before June 30 of the year of renewal by every license holder who intends to continue to practice: Each active Licensed Professional Counselor licensee must accrue twenty-four (24) Continuing Education Hours during the preceding license period, six (6) of which must involve topics in professional ethics or legal issues in the delivery of counseling services.

(4) This section shall stand repealed on July 1, 2020.

SOURCES: Laws, 1985, ch. 354, § 15; Laws, 2003, ch. 407, § 3; Laws, 2007, ch. 309, § 24; Laws, 2008, ch. 494, § 6; Laws, 2015, ch. 466, § 1, eff from and after passage (approved Apr. 20, 2015.)

CHAPTER 31

Psychologists

Sec.

73-31-1. Declaration of public policy [Repealed effective July 1, 2018].
73-31-3. Definitions [Repealed effective July 1, 2018].
73-31-5. Mississippi Board of Psychology; membership; term of office; appointment; qualifications [Repealed effective July 1, 2018].
73-31-7. State Board of Psychology; meetings; officers; powers and duties [Repealed effective July 1, 2018].
73-31-9. Fees; renewal of license; deposit of money received by board in special fund; regulation of fund; audit [Repealed effective July 1, 2018].
73-31-11. Records [Repealed effective July 1, 2018].
73-31-13. Licensing; applications; qualifications; examinations [Repealed effective July 1, 2018].
73-31-14. Temporary licenses and practice certificates [Repealed effective July 1, 2018].
73-31-15. Applicant previously licensed in another jurisdiction [Repealed effective July 1, 2018].
73-31-17. Creation of the status of psychologist emeritus; qualifications; annual renewal [Repealed effective July 1, 2018].
73-31-19. Licenses; issuance; filing [Repealed effective July 1, 2018].
73-31-21. Licenses; revocation or suspension; grounds; hearing; issuance of nondisciplinary educational letter [Repealed effective July 1, 2018].
73-31-23. Violations; penalties [Repealed effective July 1, 2018].
73-31-25. Violations; injunction [Repealed effective July 1, 2018].
73-31-27. Excluded activities [Repealed effective July 1, 2018].
73-31-29. Communications by client to psychologist privileged [Repealed effective July 1, 2018].
73-31-31. Repeal of Sections 73-31-1 through 73-31-29.

§ 73-31-1. Declaration of public policy [Repealed effective July 1, 2018].

It is declared to be the policy of the State of Mississippi that, in order to safeguard life, health, property and the public welfare of this state, and in order to protect the people of this state against unauthorized, unqualified and improper application of psychology, it is necessary that a proper regulatory authority be established and adequately provided for.

SOURCES: Codes, 1942, § 8877-101; Laws, 1966, ch. 483, § 1; reenacted, Laws, 1980, ch. 495, § 1; reenacted, Laws, 1988, ch. 354, § 1; Laws, 2011, ch. 498, § 1; reenacted without change, Laws, 2014, ch. 465, § 1, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-31-31.

Cross References — Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Penalties for violating this chapter, see § 73-31-23.

§ 73-31-3. Definitions [Repealed effective July 1, 2018].

When used in this chapter, the word or term:

(a) "Board" means the Mississippi Board of Psychology.

(b) "Institution of higher education" means any regionally accredited institution of higher education in the United States, accredited by an accrediting body recognized by the U.S. Department of Education, including a professional school, that offers a full-time doctoral course of study in psychology that is acceptable to the board; for Canadian universities, this term means an institution of higher education that is provincially or territorially chartered to grant doctoral degrees.

(c) "Person" includes an individual, firm, partnership, association or corporation.

(d)(i) "Practice of psychology" means the observation, description, evaluation, interpretation, prediction and modification of human behavior through the application of psychological principles, methods and procedures, for the purposes of:

1. Preventing, eliminating, evaluating, assessing, or predicting symptomatic, maladaptive, or undesirable behavior;

2. Evaluating, assessing and/or facilitating the enhancement of individual, group and/or organizational effectiveness including personal effectiveness, adaptive behavior, interpersonal relationships, work and life adjustment, health, and individual, group and/or organizational performance; or

3. Assisting in legal decision-making.

(ii) The practice of psychology includes, but is not limited to:

1. Psychological testing and the evaluation or assessment of personal characteristics, such as intelligence; personality; cognitive, behavioral, physical and/or emotional abilities; skills; interests; aptitudes; and neuropsychological functioning;

2. Counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy;

3. Diagnosis, treatment, and management of mental and emotional disorder or disability, alcoholism and substance abuse, disorders of habit or conduct, as well as of the psychological aspects of physical illness, accident, injury, or disability;

4. Psychoeducational evaluation, therapy and remediation;

5. Consultation with physicians, other health care professionals and patients regarding all available treatment options, as well as consultation with attorneys, judges, business, and industry;

6. Provision of direct services to individuals and/or groups for the purpose of enhancing individual and thereby organizational effectiveness, using principles, methods and/or procedures to assess and evaluate individuals on personal characteristics for individual development and/or behavior change or for making decisions about the individual, such as selection; and

7. The supervision of any of the above.

(iii) Psychological services are provided to individuals, families, groups, systems, organizations, and the public. The practice of psychology shall be construed within the meaning of this definition without regard to whether payment is received for services rendered and without regard to the means of service provision (e.g., face-to-face, telephone, Internet, or telehealth).

(e) A "psychologist" is any person licensed under this chapter, and includes a person who represents himself or herself to be a psychologist by using any title or description of services incorporating the words "psychological," "psychologist," "psychology," or who represents that he or she possesses expert qualification in any area of psychology, or offers to the public, or renders to individuals or to groups of individuals services defined as the practice of psychology by this chapter.

SOURCES: Codes, 1942, § 8877-102; Laws, 1966, ch. 483, § 2; reenacted, Laws, 1980, ch. 495, § 2; reenacted, Laws, 1988, ch. 354, § 2; Laws, 1992, ch. 436, § 1; Laws, 1994, ch. 641, § 1; Laws, 1998, ch. 355, § 1; Laws, 2001, ch. 399, § 1; Laws, 2011, ch. 498, § 2; reenacted without change, Laws, 2014, ch. 465, § 2, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-31-31.

Cross References — Penalties for representing oneself as psychologist or practicing psychology without license or while license suspended, revoked or lapsed, see § 73-31-23.

The right of licensed psychologists to participate in insurance plans and contracts providing for treatment of mental or nervous disorders, see § 83-41-211.

§ 73-31-5. Mississippi Board of Psychology; membership; term of office; appointment; qualifications [Repealed effective July 1, 2018].

(1) There is created a Mississippi Board of Psychology consisting of seven (7) members who are citizens of the United States and residing in the State of Mississippi. One (1) member of the board shall be a person who is not a psychologist or a mental health professional but who has expressed a continuing interest in the field of psychology. Each board member shall otherwise be licensed under this chapter. The composition of the board shall at all times include psychologists engaged in the professional practice of psychology and psychologists who are faculty at institutions of higher learning that grant doctoral degrees or staff or faculty of an American Psychological Association approved doctoral level internship or postdoctoral fellowship.

(2) When the term of each psychologist member ends the Governor shall, within thirty (30) days, appoint as his or her successor, for a term of five (5) years, a psychologist who holds a doctoral degree from an institution of higher education and who has been licensed under this chapter. When the term of the member who is not a psychologist ends, the Governor shall, within thirty (30) days, appoint a qualified person as his or her successor for a term of five (5) years. No board member shall serve for more than two (2) consecutive terms.

Any vacancy occurring in the board membership other than by expiration of term shall be filled by the Governor by appointment for the unexpired term of the member. All appointments of psychologist members of the board shall be made from a list containing the names of at least three (3) eligible nominees for each vacancy submitted by the Mississippi Psychological Association. Each board member shall receive a certificate of appointment from the Governor before entering on the discharge of his or her duties, and within thirty (30) days from the effective date of his appointment shall subscribe an oath for the faithful performance of his or her official duty before any officer authorized to administer oaths in this state, and shall file the same with the Secretary of State.

(3) The Governor may remove any board member for misconduct, incompetency, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon.

(4) Each board member shall serve without compensation, but shall receive actual traveling and incidental expenses necessarily incurred while engaged in the discharge of official duties.

SOURCES: Codes, 1942, § 8877-103; Laws, 1966, ch. 483, § 3; reenacted and amended, Laws, 1980, ch. 495, § 3; reenacted, Laws, 1988, ch. 354, § 3; Laws, 1992, ch. 436, § 2; Laws, 1994, ch. 641, § 2; Laws, 1998, ch. 355, § 2; Laws, 2001, ch. 399, § 2; Laws, 2011, ch. 498, § 3; reenacted without change, Laws, 2014, ch. 465, § 3, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-31-31.

Cross References — Oath of office required of public officers, see Miss Const Art. 14, § 268.

General powers and duties of governor, see § 7-1-5.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 58, 59.

§ 73-31-7. State Board of Psychology; meetings; officers; powers and duties [Repealed effective July 1, 2018].

(1) The board shall annually elect from its membership a chairman and executive secretary at a meeting held during the last two (2) quarters of the fiscal year. The board shall meet at any other times as it deems necessary or advisable, or as deemed necessary and advisable by the chairman or a majority of its members or the Governor. Reasonable notice of all meetings shall be given in the manner prescribed by the board. A majority of the board shall constitute a quorum at any meeting or hearing; except that when only four (4) members are present, decisions not gaining unanimous support shall be decided by mail ballot to all board members within fifteen (15) days succeeding the board meeting. Any meeting at which the chairman is not present shall be chaired by his designee.

(2) The board is authorized and empowered to:

(a) Adopt and, from time to time, revise any rules and regulations not inconsistent with, and as may be necessary to carry into effect the provisions of this chapter.

(b) Within the funds available, employ and/or contract with a stenographer and other personnel, and contract for services, as are necessary for the proper performance of its work under this chapter.

(c) Adopt a seal, and the executive secretary or board administrator shall have the care and custody thereof.

(d) Examine, license, and renew the license of duly qualified applicants.

(e) Conduct hearings upon complaints concerning the disciplining or licensing of applicants and psychologists.

(f) Deny, approve, withhold, revoke, suspend and/or otherwise discipline applicants and licensed psychologists.

(g) Issue an educational letter to a licensee in order to assist that individual in his or her practice as a psychologist. Such a letter will not be considered to be disciplinary action.

(h) Cause the prosecution and enjoinder of all persons violating this chapter, and incur necessary expenses therefor.

(i) Charge a fee of not more than Seven Hundred Dollars ($700.00) to a qualified psychologist as determined by the board who is applying for certification by the board to conduct examinations in civil commitment proceedings.

(j) Purchase general liability insurance coverage, including errors and omissions insurance, to cover the official actions of the board members and contract personnel and suits against them in their individual capacity. That coverage shall be in an amount determined by the board to be adequate, and the costs of the insurance shall be paid out of any funds available to the board.

(k) As additional responsibilities, effective July 1, 2018, the board shall administer and support the function of the Mississippi Autism Board under Sections 73-75-1 through 73-75-25, relating to the licensure of licensed behavior analysts and licensed assistant behavior analysts.

(3) Within thirty (30) days after the close of each fiscal year ending June 30, the board shall submit an official report, reviewed and signed by all board members, to the Governor concerning the work of the board during the preceding fiscal year. The report shall include the names of all psychologists to whom licenses have been granted; any cases heard and decisions rendered in relation to the work of the board; the names, remuneration and duties of any employees of the board; and an account of all monies received and expended by the board.

SOURCES: Codes, 1942, § 8877-104; Laws, 1966, ch. 483, § 4; reenacted and amended, Laws, 1980, ch. 495, § 4; Laws, 1984, ch. 520, § 1; reenacted, Laws, 1988, ch. 354, § 4; Laws, 1992, ch. 436, § 3; Laws, 1994, ch. 641, § 3; Laws, 1998, ch. 355, § 3; Laws, 2001, ch. 399, § 3; Laws, 2011, ch. 498, § 4; reenacted without change, Laws, 2014, ch. 465, § 4; Laws, 2017, 1st Ex Sess, ch. 7, § 32, eff from and after passage (approved June 23, 2017.)

Editor's Note — For repeal date of this section, see § 73-31-31.
Amendment Notes — The 2017 amendment, effective June 23, 2017, added (2)(k).

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses §§ 58, 59.

§ 73-31-9. Fees; renewal of license; deposit of money received by board in special fund; regulation of fund; audit [Repealed effective July 1, 2018].

(1) All fees from applicants seeking licensing under this chapter and all license renewal fees received under this chapter shall be nonrefundable. The board may charge a late fee for nonrenewal by June 30 of each year.

(2) The board shall charge an application fee to be determined by the board, but not to exceed Seven Hundred Dollars ($700.00), to applicants for licensing, and shall charge the applicant for the expenses incurred by the board for examination of the applicant. The board may increase the application fee as necessary, but may not increase the fee by more than Fifty Dollars ($50.00) above the amount of the previous year's fee.

(3) Except as provided in Section 33-1-39, every licensed psychologist in this state shall annually pay to the board a fee determined by the board, but not to exceed Seven Hundred Dollars ($700.00); and the credentialing coordinator shall thereupon issue a renewal of the license for a term of one (1) year. The board may increase the license renewal fee as necessary, but may not increase the fee by more than Fifty Dollars ($50.00) above the amount of the previous year's fee. The license of any psychologist who fails to renew during the month of June in each and every year shall lapse; the failure to renew the license, however, shall not deprive the psychologist of the right of renewal thereafter. The lapsed license may be renewed within a period of two (2) years after the lapse upon payment of all fees in arrears. A psychologist wishing to renew a license that has been lapsed for more than two (2) years shall be required to reapply for licensure.

(4) On July 1, 1993, and every odd-numbered year thereafter, no psychologist license shall be renewed unless the psychologist shows evidence of a minimum of twenty (20) clock hours of continuing education activities approved by the board.

(5) All fees and any other monies received by the board shall be deposited in a special fund that is created in the State Treasury and shall be used for the implementation and administration of this chapter when appropriated by the Legislature for that purpose. The monies in the special fund shall be subject to all provisions of the state budget laws that are applicable to special fund agencies, and disbursements from the special fund shall be made by the State Treasurer only upon warrants issued by the State Fiscal Officer upon requisitions signed by the chairman or executive secretary of the board. Any interest earned on this special fund shall be credited by the State Treasurer to the fund and shall not be paid into the State General Fund. Any unexpended monies

remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund. The State Auditor shall audit the financial affairs of the board and the transactions involving the special fund at least once a year in the same manner as for other special fund agencies.

SOURCES: Codes, 1942, § 8877-105; Laws, 1966, ch. 483, § 5; Laws, 1979, ch. 412; reenacted, Laws, 1980, ch. 495, § 5; Laws, 1984, ch. 520, § 2; reenacted, Laws, 1988, ch. 354, § 5; Laws, 1992, ch. 436, § 4; Laws, 1992, ch. 502, § 5; Laws, 1994, ch. 641, § 4; Laws, 2001, ch. 399, § 4; Laws, 2007, ch. 309, § 25; Laws, 2011, ch. 498, § 5; reenacted without change, Laws, 2014, ch. 465, § 5, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-31-31.

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Provisional license may only be renewed one time, see § 73-31-14.

§ 73-31-11. Records [Repealed effective July 1, 2018].

The board shall keep a record of its proceedings and a register of all applications for licenses, which shall show:

(a) The name, age and residence of each applicant;

(b) The date of the application;

(c) The place of professional practice of the applicant;

(d) A summary of the educational and other qualifications of the applicant;

(e) Whether or not an examination was required;

(f) Whether or not a license was granted;

(g) The date of the action of the board;

(h) Any other information as may be deemed necessary or advisable by the board in aid of the above requirements.

The records of the board shall be public records and evidence of the proceedings of the board set forth in the records; and a transcript thereof, duly certified by the executive secretary of the board, bearing the seal of the board, shall be admissible in evidence with the same force and effect as if the original were produced.

SOURCES: Codes, 1942, § 8877-106; Laws, 1966, ch. 483, § 6; reenacted, Laws, 1980, ch. 495, § 6; reenacted, Laws, 1988, ch. 354, § 6; Laws, 2011, ch. 498, § 6; reenacted without change, Laws, 2014, ch. 465, § 6, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-31-31.

§ 73-31-13. Licensing; applications; qualifications; examinations [Repealed effective July 1, 2018].

The board shall issue a license as a psychologist to each applicant who files an application upon a form and in the manner as the board prescribes, accompanied by the fee as is required by this chapter; and who furnishes evidence satisfactory to the board that he or she:

(a) Is at least twenty-one (21) years of age; and

(b) Is a citizen of the United States, a Canadian citizen applying for licensure under the terms of a reciprocity agreement, or has declared his or her intention to become a citizen. A statement by the applicant under oath that he or she is a citizen, a Canadian citizen applying for licensure under the terms of a reciprocity agreement, or that he or she intends to apply for citizenship when he or she becomes eligible to make that application, shall be sufficient proof of compliance with this requirement; and

(c) Is of good moral character. The applicant must have successfully been cleared for licensure through an investigation that consists of a determination as to good moral character and verification that the prospective licensee is not guilty of or in violation of any statutory ground for denial of licensure. For the purposes of this chapter, good moral character includes an absence of felony convictions or misdemeanor convictions involving moral turpitude as established by a criminal background check. Applicants shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose; and

(d) Is not in violation of any of the provisions of this chapter and the rules and regulations adopted under this chapter, and is not currently under investigation by another licensure board; and

(e) Holds a doctoral degree in psychology from an institution of higher education that is: regionally accredited by an accrediting body recognized by the United States Department of Education, or authorized by Provincial statute or Royal Charter to grant doctoral degrees: and from a program accredited by the American Psychological Association, or the Canadian Psychological Association. For graduates from newly established programs seeking accreditation or in areas where no accreditation exists, applicants for licensure shall have completed a doctoral program in psychology that meets recognized acceptable professional standards as determined by the board. For applicants graduating from doctoral level psychology training programs outside of the United States of America or Canada, applicants for licensure shall have completed a doctoral program in psychology that meets recognized acceptable professional standards as determined by the board; and

(f) Has two (2) years of supervised experience in the same area of emphasis as the academic degree, which includes an internship and one (1) year of supervised post-doctoral experience, that meet the standards of training as defined by the board. Each year (or equivalent) shall be comprised of at least two thousand (2,000) hours of actual work, to include direct service, training and supervisory time. A pre-doctoral internship may be counted as one (1) of the two (2) years of experience; and

(g) Demonstrates professional knowledge by passing a written (as used in this paragraph, the term "written" means either paper and pencil or computer administered or computerized testing) and oral examination in psychology prescribed by the board; except that upon examination of credentials, the board may, by unanimous consent, consider these credentials adequate evidence of professional knowledge.

Upon investigation of the application and other evidence submitted, the board shall, not less than thirty (30) days before the examination, notify each applicant that the application and evidence submitted is satisfactory and accepted or unsatisfactory and rejected; if rejected, the notice shall state the reasons for the rejection.

The place of examination shall be designated in advance by the board, and the examination shall be given at such time and place and under such supervision as the board may determine. The examination used by the board shall consist of written tests and oral tests, and shall fairly test the applicant's knowledge and application thereof in those areas deemed relevant by the board. All examinations serve the purpose of verifying that a candidate for licensure has acquired a basic core of knowledge in the discipline of psychology and can apply that knowledge to the problems confronted in the practice of psychology within the applicant's area of practice.

The board shall evaluate the results from both the written and oral examinations. The passing scores for the written and oral examinations shall be established by the board in its rules and regulations. If an applicant fails to receive a passing score on the entire examination, he or she may reapply and shall be allowed to take a later examination. An applicant who has failed two (2) successive examinations by the board may not reapply until after two (2) years from the date of the last examination failed. The board shall keep the written examination scores, and an accurate transcript of the questions and answers relating to the oral examinations, and the grade assigned to each answer thereof, as part of its records for at least two (2) years after the date of examination.

If any psychologist duly licensed under this chapter, by virtue of additional training and experience, becomes qualified to practice in a specialty other than that for which he or she was deemed competent at the time of initial licensing, and wishes to offer that service under the provisions of this chapter, he or she shall at the time of annual renewal of licenses submit additional credentials and be given the opportunity to demonstrate his or her knowledge and application thereof in areas deemed relevant to his or her specialty. The board may charge a reasonable fee for evaluating these credentials and the applicant's knowledge.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Codes, 1942, § 8877-107; Laws, 1966, ch. 483, § 7; reenacted, Laws, 1980, ch. 495, § 7; reenacted, Laws, 1988, ch. 354, § 7; Laws, 1992, ch. 436, § 5; Laws, 1994, ch. 641, § 5; Laws, 1997, ch. 588, § 56; Laws, 1998, ch. 355, § 4; Laws, 2001, ch. 399, § 5; Laws, 2011, ch. 498, § 7; Laws, 2012, ch. 363, § 1; reenacted without change, Laws, 2014, ch. 465, § 7, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-31-31.

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Continuing education requirements, see § 73-31-9.

Provisional and temporary licenses, see § 73-31-14.

Grounds for revocation or suspension of license, see § 73-31-21.

Violations, penalties, see § 73-31-23.

JUDICIAL DECISIONS

1. In general.

The board of psychological examiners improperly denied on application for licensure on the ground that the name of the applicant's major area of doctoral study, as indicated on his official transcript, did not contain the word "psychology," where the applicant submitted a supplemental transcript identifying his major as counseling psychology and where the undisputed evidence established that the requirements of this section had been met. State Bd. of Psychological Exmrs. v. Coxe, 355 So. 2d 669 (Miss. 1978).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

CJS. 53 C.J.S., Licenses §§ 58, 59 et seq.

§ 73-31-14. Temporary licenses and practice certificates [Repealed effective July 1, 2018].

(1) Psychologists who are duly licensed in other jurisdictions and not currently under investigation by another licensure board may, upon application for licensure, apply for a temporary license, which shall be valid until the next administration of the oral examination. The temporary license shall be issued upon the applicant's passage of the Examination for Professional Practice of Psychology (EPPP) at the level established by the board in its rules and regulations and equivalent to that required for permanent licensure. Each applicant for a temporary license shall file an application upon a form and in the manner as the board prescribes, accompanied by a fee equal to the amount required for permanent licensure. A temporary license will lapse for any person who has failed the oral examination or has had his or her license suspended or revoked by the board. Procedures for the issuance of temporary licenses shall

be established by the board in its rules and regulations. The issuance of a temporary license to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(2) Psychologists who are duly licensed in other jurisdictions may apply for a temporary practice certificate that allows them to practice psychology on a temporary basis in the State of Mississippi. That practice must be limited in scope and duration, not exceeding thirty (30) days during a consecutive twelve-month period. Applicants for a temporary practice certificate shall provide to the board the nature of the practice before providing that service, and shall make available to the board a current copy of his or her license or verification of a valid license in good standing. Psychologists who receive temporary practice certificates are subject to a jurisprudence examination at the request of the board. This authority for a temporary practice certificate does not apply to a psychologist who has been denied licensure in Mississippi, is a legal resident of Mississippi, or intends to practice full-time or a major portion of their time in Mississippi. Each applicant for a temporary practice certificate shall file an application upon a form and in the manner as the board prescribes, accompanied by a fee in an amount determined by the board, but not to exceed Three Hundred Dollars ($300.00).

(3) Applicants awaiting licensure in Mississippi are prohibited from the practice of psychology without a temporary license issued by the board. For the purposes of this subsection, the practice of psychology shall be construed without regard to the means of service provision (e.g., face-to-face, telephone, Internet, telehealth).

SOURCES: Laws, 1998, ch. 355, § 5; Laws, 2001, ch. 399, § 6; Laws, 2011, ch. 498, § 8; Laws, 2013, ch. 350, § 29; reenacted without change, Laws, 2014, ch. 465, § 8, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-31-31.

§ 73-31-15. Applicant previously licensed in another jurisdiction [Repealed effective July 1, 2018].

(1) Upon application accompanied by the proper fee, the board may, without written or oral examination, issue a license to any person who furnishes, upon a form and in the manner as the board prescribes, evidence satisfactory to the board that he or she (a) is licensed or certified as a psychologist by another state, territorial possession of the United States, District of Columbia, Commonwealth of Puerto Rico or Canadian Province, if the requirements for that license or certification are the substantial equivalent of this chapter; or (b) is a diplomate in good standing of the American Board of Examiners in Professional Psychology; or (c) possesses a valid Certificate of Professional Qualification (CPQ) granted by the Association of State and Provincial Psychology Boards.

(2) In addition, the board may issue a license, without written examination, to an applicant who:

(a) Has at least twenty (20) years of licensure to practice in another state, territorial possession of the United States, District of Columbia, or Commonwealth of Puerto Rico or Canadian Province when that license was based on a doctoral degree; and

(b) Has had no disciplinary sanction during the entire period of licensure; and

(c) Is not currently under investigation by another licensure board; and

(d) Has demonstrated current qualification by successfully passing the oral examination; and

(e) Has completed the appropriate application and paid the fees as required by the board.

(3) The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Codes, 1942, § 8877-108; Laws, 1966, ch. 483, § 8; reenacted, Laws, 1980, ch. 495, § 8; reenacted, Laws, 1988, ch. 354, § 8; Laws, 1998, ch. 355, § 6; Laws, 2001, ch. 399, § 7; Laws, 2011, ch. 498, § 9; Laws, 2013, ch. 350, § 30; reenacted without change, Laws, 2014, ch. 465, § 9, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-31-31.
Cross References — Continuing education requirements, see § 73-31-9.
Comparable Laws from other States — Arkansas: A.C.A. § 17-97-306.
Florida: Fla. Stat. § 490.006.
Georgia: O.C.G.A. § 43-39-10.
North Carolina: N.C. Gen. Stat. § 90-270.13.
South Carolina: S.C. Code Ann. § 40-55-110.
Tennessee: Tenn. Code Ann. § 63-11-211.

§ 73-31-17. Creation of the status of psychologist emeritus; qualifications; annual renewal [Repealed effective July 1, 2018].

The status of psychologist emeritus is created. To qualify for status as psychologist emeritus, a psychologist must apply for psychologist emeritus status with the board upon a form and in the manner as the board prescribes, accompanied by a fee equal to one-half (½) of the amount of the permanent licensure renewal fee as determined by the board. The applicant shall be required to make a satisfactory showing to the board, in a manner to be determined by the board, that the applicant (a) is sixty-five (65) years old or older, (b) has held continuous licensure as a psychologist in the State of Mississippi for at least twenty (20) years, and (c) at the time of application is retired from the full-time practice of psychology and is not practicing more than eighty (80) hours per month in any capacity in the State of Mississippi. For the purposes of this section, the practice of psychology shall be construed without regard to the means of service provision (e.g., face-to-face, telephone, Internet, telehealth). The applicant must renew his or her psychologist emeritus status annually on the same renewal schedule as permanent licensure. Renewal shall include confirmation of the psychologist's eligibility and attestation, at the time of renewal, of his or her continued "retired" status.

SOURCES: Laws, 2011, ch. 498, § 10; reenacted without change, Laws, 2014, ch. 465, § 10, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-31-31.

A former § 73-31-17 [Codes, 1942, § 8877-109; Laws, 1966, ch. 483, § 9; reenacted, Laws, 1980, ch. 495, § 9; reenacted, Laws, 1988, ch. 354, § 9, eff from and after July 1, 1988; repealed, Laws, 1992, ch. 436, § 9, eff from and after July 1, 1992] authorized the State Board of Psychological Examiners to issue temporary licenses.

§ 73-31-19. Licenses; issuance; filing [Repealed effective July 1, 2018].

The board shall issue a license signed by the chairman and executive secretary of the board whenever an applicant has been successfully qualified as provided in this chapter. A copy of the license, so certified by the executive secretary as a true copy, shall be filed by the licensee in the office of the clerk of the circuit court in the county in which the licensee resides.

SOURCES: Codes, 1942, § 8877-111; Laws, 1966, ch. 483, § 11; reenacted, Laws, 1980, ch. 495, § 10; reenacted, Laws, 1988, ch. 354, § 10; Laws, 2001, ch. 399, § 8; Laws, 2011, ch. 498, § 11; reenacted without change, Laws, 2014, ch. 465, § 11, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-31-31.

Cross References — Continuing education requirements, see § 73-31-9.

Qualifications for licensing as psychologist, see § 73-31-13.

Revocation or suspension of license, see § 73-31-21.

§ 73-31-21. Licenses; revocation or suspension; grounds; hearing; issuance of nondisciplinary educational letter [Repealed effective July 1, 2018].

(1) The board, by an affirmative vote of at least four (4) of its seven (7) members, shall withhold, deny, revoke or suspend any license issued or applied for in accordance with the provisions of this chapter, or otherwise discipline a licensed psychologist, upon proof that the applicant or licensed psychologist:

(a) Has violated the current code of ethics of the American Psychological Association or other codes of ethical standards adopted by the board; or

(b) Has been convicted of a felony or any offense involving moral turpitude, the record of conviction being conclusive evidence thereof; or

(c) Is using any substance or any alcoholic beverage to an extent or in a manner dangerous to any other person or the public, or to an extent that the use impairs his or her ability to perform the work of a professional psychologist with safety to the public; or

(d) Has impersonated another person holding a psychologist license or allowed another person to use his or her license; or

(e) Has used fraud or deception in applying for a license or in taking an examination provided for in this chapter; or

(f) Has accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons; or

(g) Has allowed his or her name or license issued under this chapter to be used in connection with any person or persons who perform psychological services outside of the area of their training, experience or competence; or

(h) Is legally adjudicated mentally incompetent, the record of that adjudication being conclusive evidence thereof; or

(i) Has willfully or negligently violated any of the provisions of this chapter. The board may recover from any person disciplined under this chapter, the costs of investigation, prosecution, and adjudication of the disciplinary action.

(2) Notice shall be effected by registered mail or personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days nor more than sixty (60) days from the date of the mailing or that service, at which time the applicant or licensee shall be given an opportunity for a prompt and fair hearing. For the purpose of the hearing the board, acting by and through its executive secretary, may subpoena persons and papers on its own behalf and on behalf of the applicant or licensee, may administer oaths and may take testimony. That testimony, when properly transcribed, together with the papers and exhibits, shall be admissible in evidence for or against the applicant or licensee. At the hearing, the applicant or licensee may appear by counsel and personally in his or her own behalf. Any person sworn and examined by a witness in the hearing shall not be held to answer criminally, nor shall any papers or documents produced by the witness be competent evidence in any criminal proceedings against the witness other than for perjury in delivering his or her evidence. On the basis of any such hearing, or upon default of applicant or licensee, the board shall make a determination specifying its findings of fact and conclusions of law. A copy of that determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision of the board denying, revoking or suspending the license shall become final thirty (30) days after so mailed or served, unless within that period the applicant or licensee appeals the decision to the chancery court, under the provisions hereof, and the proceedings in chancery shall be conducted as other matters coming before the court. All proceedings and evidence, together with exhibits, presented at the hearing before the board shall be admissible in evidence in court in the appeal.

(3) The board may subpoena persons and papers on its own behalf and on behalf of the respondent, may administer oaths and may compel the testimony of witnesses. It may issue commissions to take testimony, and testimony so taken and sworn to shall be admissible in evidence for and against the respondent. The board shall be entitled to the assistance of the chancery court or the chancellor in vacation, which, on petition by the board, shall issue ancillary subpoenas and petitions and may punish as for contempt of court in the event of noncompliance therewith.

(4) Every order and judgment of the board shall take effect immediately on its promulgation unless the board in the order or judgment fixes a probationary period for the applicant or licensee. The order and judgment shall continue in effect unless upon appeal the court by proper order or decree terminates it earlier. The board may make public its order and judgments in any manner and form as it deems proper. It shall, in event of the suspension or revocation of a license, direct the clerk of the circuit court of the county in which that license was recorded to cancel that record.

(5) Nothing in this section shall be construed as limiting or revoking the authority of any court or of any licensing or registering officer or board, other than the Mississippi Board of Psychology, to suspend, revoke and reinstate licenses and to cancel registrations under the provisions of Section 41-29-311.

(6) Suspension by the board of the license of a psychologist shall be for a period not exceeding one (1) year. At the end of this period the board shall reevaluate the suspension, and shall either reinstate or revoke the license. A person whose license has been revoked under the provisions of this section may reapply for a license after more than two (2) years have elapsed from the date that the denial or revocation is legally effective.

(7) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

(8) The board may issue a nondisciplinary, educational letter to licensees as provided in Section 73-31-7(2)(g). The board may also direct a psychologist to obtain a formal assessment of ability to practice safely if there is reason to believe there may be impairment due to substance abuse or mental incapacity. Licensees who may be impaired, but who are able to practice safely, may be required by the board to seek appropriate treatment and/or supervision. That action by the board in itself will not be considered disciplinary.

SOURCES: Codes, 1942, § 8877-112; Laws, 1966, ch. 483, § 12; reenacted, Laws, 1980, ch. 495, § 11; reenacted, Laws, 1988, ch. 354, § 11; Laws, 1992, ch. 436, § 6; Laws, 1994, ch. 641, § 6; Laws, 1996, ch. 507, § 64; Laws, 1998, ch. 355, § 7; Laws, 2001, ch. 399, § 9; Laws, 2011, ch. 498, § 12; reenacted without change, Laws, 2014, ch. 465, § 12, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second sentence in subsection (7). The words "Section 93-11-157 of this act" were changed to "Section 93-11-157". The Joint Committee ratified the correction at its May 20, 1998 meeting.

Editor's Note — For repeal date of this section, see § 73-31-31.

Cross References — Evaluation and review of professional health services providers, see §§ 41-63-1 et seq.

Continuing education requirements, see § 73-31-9.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

JUDICIAL DECISIONS

1. In general.

Decision of professional board in matter regarding discipline of one of its members may not be overturned where decision is supported by substantial evidence, or may be overturned only where decision is arbitrary and capricious; therefore, review of such decisions in Chancery Court is limited to record made before Board, and court has no authority to proceed de novo; Chancery Court violated that premise where it considered post-hearing, post-decision consent of patient who had filed complaint against psychologist. Mississippi State Bd. of Psychological Exmrs. v. Hosford, 508 So. 2d 1049 (Miss. 1987).

Board was within its authority in finding violation of code of ethics of American Psychological Association by psychologist who disclosed information obtained in psychologist-patient relationship, which violated provision of professional code regarding patient confidences. Mississippi State Bd. of Psychological Exmrs. v. Hosford, 508 So. 2d 1049 (Miss. 1987).

It is within Board's authority to determine that requirement of confidentiality is paramount to danger that temporary custody of child might be placed with wrong parent, hence making requirement of confidentiality of sufficient strength and importance that clear danger exception to principle of confidentiality should be read narrowly and limited to cases involving eminent danger to life and limb. Mississippi State Bd. of Psychological Exmrs. v. Hosford, 508 So. 2d 1049 (Miss. 1987).

RESEARCH REFERENCES

ALR. Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner. 70 A.L.R.4th 132.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 37 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

24 Am. Jur. Proof of Facts 3d 123, Proof of Unauthorized Disclosure of Confidential Patient Information by a Psychotherapist.

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-31-23. Violations; penalties [Repealed effective July 1, 2018].

(1) It shall be a misdemeanor:

(a) For any person not licensed under this chapter to represent himself or herself as a psychologist or practice psychology in the manner described in Section 73-31-3; or

(b) For any person to represent himself or herself as a psychologist or practice psychology in the manner described in Section 73-31-3 during the time that his or her license as a psychologist is suspended or revoked or lapsed; or

(c) For any person to otherwise violate the provisions of this chapter.

That misdemeanor shall be punishable, upon conviction, by imprisonment for not more than sixty (60) days or by a fine of not more than Three Hundred Dollars ($300.00), or by both that fine and imprisonment. Each violation shall be deemed a separate offense. The misdemeanor shall be prosecuted by the district attorney of the judicial district in which the offense was committed in the name of the people of the State of Mississippi.

(2) Any entity, organization or person, including the board, any member of the board, and its agents or employees, acting in good faith and without malice, who makes any report or information available to the board regarding violation of any of the provisions of this chapter, or who assists in the organization, investigation or preparation of any such report or information or assists the board in carrying out any of its duties or functions provided by law, shall be immune from civil or criminal liability for those acts.

The immunity granted under the provisions of this subsection shall not apply to and shall not be available to any psychologist who is the subject of any report or information relating to a violation by the psychologist of the provisions of this chapter.

SOURCES: Codes, 1942, § 8877-113; Laws, 1966, ch. 483, § 13; reenacted, Laws, 1980, ch. 495, § 12; Laws, 1984, ch. 520, § 3; reenacted, Laws, 1988, ch. 354, § 12; Laws, 1992, ch. 436, § 7; Laws, 1994, ch. 641, § 7; Laws, 2001, ch. 399, § 10; Laws, 2011, ch. 498, § 13; reenacted without change, Laws, 2014, ch. 465, § 13, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1)(a) and (b). The words “of this chapter” were deleted following “Section 73-31-3.” The Joint Committee ratified the correction at its August 5, 2008, meeting.

Editor’s Note — For repeal date of this section, see § 73-31-31.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violations, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 43.

25 Am. Jur. Proof of Facts 3d 117, Proof of Psychotherapist’s Negligence in Diagnosing and Treating a Patient’s Mental Condition.

CJS. 53 C.J.S., Licenses §§ 128-132.

§ 73-31-25. Violations; injunction [Repealed effective July 1, 2018].

The board may, in the name of the people of the State of Mississippi, through the Attorney General, except as otherwise authorized in Section 7-5-39, apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act declared to be a misdemeanor by this chapter.

If it is established that the defendant has been or is committing an act declared to be a misdemeanor by this chapter, the court, or any judge thereof, shall enter a decree perpetually enjoining the defendant from further committing that act. In case of violation of any injunction issued under the provisions of this section, the court, or any judge thereof, may summarily try and punish the offender for contempt of court. Those injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided for in this chapter.

SOURCES: Codes, 1942, § 8877-114; Laws, 1966, ch. 483, § 14; reenacted, 1980, ch. 495, § 13; reenacted, 1988, ch. 354, § 13; Laws, 2011, ch. 498, § 14; Laws, 2012, ch. 546, § 38; reenacted without change, Laws, 2014, ch. 465, § 14, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-31-31.

Cross References — Injunctions to restrain illegal practice of profession, see § 73-51-1.

§ 73-31-27. Excluded activities [Repealed effective July 1, 2018].

(1) Nothing in this chapter shall be construed to limit:

(a) The activities and services of a student, intern or trainee in psychology pursuing a course of study in psychology at an institution of higher education, if these activities and services constitute a part of his or her supervised course of study; or

(b) The services and activities of members of other professional groups licensed or certified by the State of Mississippi who perform work of a psychological nature consistent with their training, work experience history, and with any code of ethics of their respective professions, provided they do not hold themselves out to be psychologists. Portions of the practice of psychology as defined by this chapter overlap with the activities of other professional groups and it is not the intent of this chapter to regulate the activities of those professional groups.

(2) Individuals certified by the Mississippi State Department of Education may use appropriate titles such as "school psychologist," "certified school psychologist," "educational psychologist" or "psychometrist" only when they are employed by or under contract with a school district and practicing in school or educational settings.

(3) A lecturer employed by an institution of higher learning may use an appropriate academic or research title, provided he or she does not represent himself or herself as a psychologist or practice psychology in the manner described in Section 73-31-3.

SOURCES: Codes, 1942, § 8877-115; Laws, 1966, ch. 483, § 15; Laws, 1968, ch. 510, § 1; reenacted, Laws, 1980, ch. 495, § 14; reenacted, Laws, 1988, ch. 354, § 14; Laws, 1992, ch. 436, § 8; Laws, 1994, ch. 641, § 8; Laws, 2001, ch. 399, § 11; Laws, 2002, ch. 468, § 1; Laws, 2011, ch. 498, § 15; reenacted without change, Laws, 2014, ch. 465, § 15, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the last sentence of (1)(d). The words “this act” were changed to “this chapter” twice. The Joint Committee ratified the correction at its August 5, 2008 meeting.

Editor’s Note — For repeal date of this section, see § 73-31-31.

Cross References — Mississippi Department of Education generally, see § 37-3-1 et seq.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 24.

CJS. 53 C.J.S., Licenses §§ 56, 57.

§ 73-31-29. Communications by client to psychologist privileged [Repealed effective July 1, 2018].

A psychologist shall not be examined without the consent of his or her client as to any communication made by the client to the psychologist or the psychologist’s advice given thereon in the course of professional employment; nor shall a psychologist’s secretary, stenographer or clerk be examined without the consent of his or her employer concerning any fact, the knowledge of which he or she has acquired in that capacity.

SOURCES: Codes, 1942, § 8877-116; Laws, 1966, ch. 483, § 16; reenacted, Laws, 1980, ch. 495, § 15; reenacted, Laws, 1988, ch. 354, § 15; Laws, 2011, ch. 498, § 16; reenacted without change, Laws, 2014, ch. 465, § 16, eff from and after July 1, 2014.

Editor’s Note — For repeal date of this section, see § 73-31-31.

Cross References — Privileged medical communications, see § 13-1-21.

JUDICIAL DECISIONS

1. In general.
2. Threats of violence.

1. In general.

Section 43-21-353 does not create a child abuse exception to the psychologist-patient privilege set forth in § 73-31-29. Section 43-21-353 pertains to situations where a child is presented to a physician for treatment. It does not pertain to a situation where the offender seeks treatment from a physician; if such were the case, persons with abnormal behaviors would be forestalled from seeking treatment. Everett v. State, 572 So. 2d 838 (Miss. 1990).

In a sexual battery prosecution involving the defendant's sexual abuse of his stepdaughter, the trial court did not err in allowing the defendant's mental health therapist to testify about communications during the defendant's therapy sessions, where the defendant waived any and all rights under the psychotherapist-patient privilege by requesting the therapist to write a letter to the court informing the trial judge of his therapy sessions which treated his sexual behavior toward his stepdaughter; by making such a request, the defendant intended the communications to be disclosed to a third person, namely the court. Everett v. State, 572 So. 2d 838 (Miss. 1990).

Psychologists should refuse to make disclosures which result from psychologist-patient relationship until ordered to do so by court, which order would protect psychologist from discipline by Board. Mississippi State Bd. of Psychological Exmrs. v. Hosford, 508 So. 2d 1049 (Miss. 1987).

2. Threats of violence.

Miss. Code Ann. § 41-21-97 creates an exception to the psychologist-patient privilege under Miss. Code Ann. § 73-31-29 where the patient makes threats of physical violence. Hearn v. State, 3 So. 3d 722 (Miss. 2008).

RESEARCH REFERENCES

ALR. Privilege, in judicial or quasi-judicial proceedings, arising from relationship between psychiatrist or psychologist and patient. 44 A.L.R.3d 24.

Constitutionality, with respect to accused's rights to information or confrontation, of statute according confidentiality to sex crime victim's communications to sexual counselor. 43 A.L.R.4th 395.

Insured-insurer communications as privileged. 55 A.L.R.4th 336.

Situations in which federal courts are governed by state law of privilege under Rule 501 of the Federal Rules of Evidence. 48 A.L.R. Fed. 259.

Am Jur. 47 Am. Jur. Proof of Facts 2d 721, Psychotherapist and Patient Privilege.

2 Am. Jur. Proof of Facts 3d 327, Psychotherapist's Liability for Failure to Protect Third Person.

24 Am. Jur. Proof of Facts 3d 123, Proof of Unauthorized Disclosure of Confidential Patient Information by a Psychotherapist.

Law Reviews. McCormick, The Repealer: Conflicts in Evidence Created by Misapplication of Mississippi Rule of Evidence 1103. 67 Miss. L. J. 547, Winter, 1997.

§ 73-31-31. Repeal of Sections 73-31-1 through 73-31-29.

Sections 73-31-1 through 73-31-29 shall stand repealed on July 1, 2018.

SOURCES: Laws, 2011, ch. 498, § 17; Laws, 2014, ch. 465, § 17, eff from and after July 1, 2014.

Editor's Note — A former § 73-31-31 [Laws, 1979, ch. 301, § 40; 1980, ch. 495, § 16; repealed by Laws, 1988, ch. 354, § 16, eff from and after July 1, 1988] provided for the repeal of §§ 73-31-1 through 73-31-29, effective December 31, 1988.

CHAPTER 33

Public Accountants

Sec.

73-33-1. Who may use title "certified public accountant"; firm permit requirements; registration and permit requirements.
73-33-2. Definitions.
73-33-3. Board of public accountancy; composition; appointment and terms of members; meetings.
73-33-5. Powers and duties of board; examinations; standards of practice.
73-33-7. Expenses, how paid; certificate and registration fees; exemptions.
73-33-8. Payment and deposit in state treasury of funds received by board of public accountancy.
73-33-9. Applicants of other states.
73-33-11. Revocation, cancellation, or suspension of certificates and licenses or imposition of civil penalty; powers of board of accountancy as trial board; costs; appeals.
73-33-12. Proceedings, records and work papers of review committee privileged.
73-33-13. Penalties for practicing without licenses.
73-33-15. Violations; penalties; exceptions.
73-33-16. Ownership of working papers; privileged communications.
73-33-17. Reciprocity with other states.
73-33-18. Disclaimer by persons not subject to this chapter.
73-33-19. Person holding certificate without license on July 1, 1999 to be issued license automatically.

§ 73-33-1. Who may use title "certified public accountant"; firm permit requirements; registration and permit requirements.

(1) Any person residing or having a place for the regular transaction of business in the State of Mississippi being of good moral character, and who shall have received from the State Board of Public Accountancy a license certifying his qualifications as a certified public accountant as hereinafter provided, shall be styled or known as a certified public accountant, and it shall be unlawful for any other person or persons to assume such title or use any letters, abbreviations or words to indicate that such person using same is a certified public accountant, unless such person qualifies for a practice privilege under Section 73-33-17, or at the discretion of the board, such person has been granted use of the title of "certified public accountant retired" by the Mississippi State Board of Public Accountancy or has received a reciprocal certified public accountant license from the State Board of Public Accountancy.

(2) A certified public accountant practicing public accounting under a Mississippi license must be associated and registered with a certified public accountant firm.

(3) The State Board of Public Accountancy shall grant and renew permits to practice as a CPA firm to applicants that demonstrate their qualifications in accordance with this section.

(a) The following shall hold a permit issued under this section: any firm with an office in this state that practices public accountancy or that uses the title "CPA" or "CPA firm," and any firm that does not have an office in this state but performs the services described in Section 73-33-17(4) for a client having its home office in this state.

(b) A firm that does not have an office in this state may perform a review of a financial statement to be performed in accordance with Statements on Standards for Accounting and Review Services, or a compilation as defined in Section 73-33-2(d), for a client having its home office in this state and may use the title "CPA" and "CPA firm" without a permit issued under this section only if such firm has the qualifications described in subsection (4), complies with the peer review requirements set forth by board rule, and performs such services through an individual with practice privileges under Section 73-33-17.

(c) A firm that is not subject to the requirements of paragraph (a) or (b) of this subsection may perform other professional services within the practice of public accountancy while using the title "CPA" and "CPA firm" in this state without a permit issued under this section only if such firm performs such services through an individual with practice privileges under Section 73-33-17 and such firm can lawfully do so in the state where the individuals with practice privileges have their principal place of business.

(4) In order to obtain and maintain a firm permit, a certified public accountant firm shall be required to show the following:

(a) It is wholly owned by natural persons and not owned in whole or in part by business entities; and

(b) A simple majority of the ownership of the firm in terms of financial interests and/or voting rights hold certified public accountant licenses in any state; however, the individuals whose principal place of business is in Mississippi and who perform professional services in this state shall hold a Mississippi certified public accountant license, and that individuals who qualify for practice privileges under Section 73-33-17 who perform services for which a firm permit is required under Section 73-33-17(4) shall not be required to obtain a certificate pursuant to Section 73-33-3 or 73-33-9.

(5) Any certified public accountant firm may include nonlicensee owners, provided that:

(a) The firm designates a licensee of this state who is responsible for the proper registration of the firm and identifies that individual to the board; or in the case of a firm without a Mississippi office which must have a permit pursuant to subsection (3)(a), the firm designates a licensee of another state who meets the requirements provided in Section 73-33-17;

(b) All nonlicensee owners are active individual participants in the certified public accountant firm or affiliated entities; and

(c) The firm complies with such other requirements as the board may impose by rule.

(6) Unless exempt from the firm permit requirement under Section 73-33-1(3), no person or persons shall engage in the practice of public accounting as defined herein as a partnership, joint venture or professional corporation, sole proprietor, or other business organization allowed by law,

unless and until each business organization or office thereof located inside the State of Mississippi has registered with and been issued a firm permit by the State Board of Public Accountancy.

SOURCES: Codes, Hemingway's 1921 Supp. § 6661a; 1930, § 5911; 1942, § 8905; Laws, 1920, ch. 211; Laws, 1981, ch. 445, § 1; reenacted and amended, Laws, 1983, ch. 411, § 1; reenacted, Laws, 1991, ch. 306, § 1; Laws, 1999, ch. 533, § 1; Laws, 2007, ch. 467, § 1; Laws, 2008, ch. 331, § 1; Laws, 2010, ch. 408, § 1, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in 5(b). The word "nonlicensees" was changed to "nonlicensee" so that "All nonlicensees owners are active individual participants in ..." now reads as "All nonlicensee owners are active individual participants in ..." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (5)(b), by deleting "and" and substituting a period for the semicolon at the end. The Joint Committee ratified the correction at its July 22, 2010, meeting.

Cross References — Practice of public accounting defined, see § 73-33-2.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 8905] is a valid exercise of the police power of the state. Moore v. Grillis, 205 Miss. 865, 39 So. 2d 505, 10 A.L.R.2d 1425 (1949).

RESEARCH REFERENCES

ALR. Regulation of accountants. 70 A.L.R.2d 433.

Liability of public accountant to third parties. 46 A.L.R.3d 979.

Accountant's malpractice liability to client. 92 A.L.R.3d 396.

Validity, construction, and application of statute or regulation restricting use of terms such as "accountant," "public accountant," or "certified public accountant". 4 A.L.R.4th 1201.

Liability of independent accountant to investors or shareholders. 35 A.L.R.4th 225.

Liability of independent accountant to investors or shareholders. 48 A.L.R.5th 389.

Am Jur. 1 Am. Jur. 2d, Accountants § 2.

1 Am. Jur. Pl & Pr Forms (Rev), Accountants, Form 11.

1 Am. Jur. Legal Forms 2d, Accountants §§ 5:8 (employment of accountants).

1 Am. Jur. Legal Forms 2d, Accountants §§ 5:62, 5:46 (fees and compensation of accountant).

§ 73-33-2. Definitions.

For the purposes of this chapter, unless context requires otherwise:

(a) "Attest" means providing the following services:

(i) Any audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

(ii) Any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS);

(iii) Any examination of prospective financial information to be performed with the Statements on Standards for Attestation Engagements (SSAE);

(iv) Any engagement to be performed in accordance with the Auditing Standards of the Public Company Accounting Oversight Board (PCAOB); and

(v) Any examination, review or agreed upon procedures engagement to be performed in accordance with the SSAE, other than an examination described in subparagraph (iii) of this paragraph.

The standard specified in this definition shall be adopted by reference by the board pursuant to rulemaking and shall be those developed for general application by recognized national accountancy organizations, such as the American Institute of Certified Public Accountants (AICPA) and the Public Company Accounting Oversight Board (PCAOB).

(b) "Certified public accountant," "CPA," or "licensee" means an individual who holds a license issued by the Mississippi State Board of Public Accountancy to practice public accounting or qualifies for a practice privilege under Section 73-33-17. The term "license" is used synonymously for the terms "certificate" or "certification."

(c) "Certified public accountant firm" or "CPA firm" means any professional corporation, partnership, joint venture, professional association, sole proprietor, or other business organization or office thereof allowable under state law and under the qualifications as set in the rules and regulations of the board maintained for the purpose of performing or offering to perform public accounting.

(d) "Compilation" means a service to be performed in accordance with Statements on Standards for Accounting and Review Services (SSARS) that is presenting, in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

(e) "Practice of, or practicing, CPA public accounting or CPA public accountancy" means the performance, the offering to perform, or maintaining an office by a person, persons or firm holding itself out to the public as certified public accountant(s) or CPA firm, for a client or potential client, or certified public accountant(s) or CPA firm performing one or more kinds of services involving the use of accounting or auditing skills, including, but not limited to, the issuance of reports on financial statements, or of one or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.

(f) "Firm permit to practice public accounting" means a permit issued by the Mississippi State Board of Public Accountancy permitting a certified public accountant firm to practice CPA public accounting, and "permit holder" means a certified public accountant firm holding such permit.

(g) "Substantial equivalency" means a determination by the Mississippi State Board of Public Accountancy or its designee that another jurisdiction's licensure requirements are comparable to or exceed those contained in Section 73-33-17(1), or that an individual who holds a valid license as a certified public accountant has education, examination and experience qualifications that are comparable to or exceed those contained in Section 73-33-17(1). In ascertaining substantial equivalency as used in this chapter, the board shall take into account the qualifications without regard to the sequence in which experience, education or examination qualifications were attained.

(h) "Principal place of business" means the office location designated by the licensee for purposes of substantial equivalency and reciprocity.

(i) "Home office" is the location specified by the client as the address to which a service described in Section 73-33-17(4) is directed.

SOURCES: Laws, 1999, ch. 533, § 2; Laws, 2008, ch. 331, § 2; Laws, 2010, ch. 408, § 2; Laws, 2016, ch. 477, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment rewrote (a), which read: "'Attest' means providing the following financial statement services: any audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS); any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS); any examination of prospective financial information to be performed with the Statements on Standards for Attestation Engagements (SSAE); and any engagement to be performed in accordance with the Auditing Standards of the PCAOB."

§ 73-33-3. Board of public accountancy; composition; appointment and terms of members; meetings.

(1) There shall be a board of public accountancy, consisting of seven (7) members, who are qualified electors of this state; their duties, powers and qualifications are herein prescribed by this chapter. The members of the Mississippi State Board of Public Accountancy shall be appointed from holders of certificates issued under and by virtue of this chapter.

(2) The present members of the Mississippi State Board of Public Accountancy shall continue to serve until January 1, 1984. After January 1, 1984, the appointments to the board shall be as hereinafter provided.

The Governor shall appoint five (5) members from the congressional districts as they are presently constituted, as follows: The initial member from the First Congressional District shall be appointed for a term of one (1) year; the initial member from the Second Congressional District shall be for a term of two (2) years; the initial member from the Third Congressional District shall be appointed for a term of three (3) years; the initial member from the Fourth Congressional District shall be appointed for a term of four (4) years; the initial member from the Fifth Congressional District shall be appointed for a term of five (5) years.

The members of the board as constituted on July 1, 2007, who are appointed from Congressional Districts and whose terms have not expired shall serve the balance of their terms, after which time the membership of the board shall be appointed as follows: There shall be appointed one (1) member of the board from each of the four (4) Mississippi Congressional Districts as they currently exist. In addition, the Governor shall appoint three (3) members from the state at large. Terms for all members shall be for five (5) years. There shall be no more than two (2) of the three (3) state-at-large members of the board from any one (1) congressional district.

All terms shall begin on January 1 of the appropriate year. No member of the board shall hold any elected office. Appointments made to fill a vacancy of a term shall be made by the appointing officer within sixty (60) days after the vacancy occurs. Any person appointed to fill an unexpired term shall hold office only for and during the unexpired term of the member he succeeds.

(3) Each member of the board shall take the oath prescribed by Section 268 of the Mississippi Constitution. The board shall elect from among its membership, to serve one (1) year terms, a chairman who shall preside over meetings and a vice chairman who shall preside in the absence of the chairman or when the chairman shall be excused. A majority of the membership of the board shall constitute a quorum for the transaction of any business. Any board member who shall not attend three (3) consecutive regular meetings of the board for reasons other than illness of said member shall be subject to removal by a majority vote of the board members.

(4) The board shall hold regular meetings and special meetings as may be necessary for the purposes of conducting such business as may be required. The board shall adopt rules and regulations governing times and places for meetings, and governing the manner of conducting its business. All meetings of the board shall be open to the public.

SOURCES: Codes, Hemingway's 1921 Supp. § 6661b; 1930, § 5912; 1942, § 8906; Laws, 1920, ch. 211; reenacted and amended, Laws, 1983, ch. 411 § 2; reenacted, Laws, 1991, ch. 306, § 2; Laws, 2007, ch. 467, § 2, eff from and after July 1, 2007.

Cross References — General powers and duties of governor, see § 7-1-5.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 8906] is a valid exercise of the police power of the state. Moore v. Grillis, 205 Miss. 865, 39 So. 2d 505, 10 A.L.R.2d 1425 (1949).

RESEARCH REFERENCES

Am Jur. 1 Am. Jur. 2d, Accountants § 2.

CJS. 53 C.J.S., Licenses §§ 58, 59.

§ 73-33-5. Powers and duties of board; examinations; standards of practice.

The Mississippi State Board of Public Accountancy is hereby authorized with the following powers and duties:

(a) To adopt a seal;

(b) To govern its proceedings;

(c) To set the fees and to regulate the time, manner and place of conducting examinations to be held under this chapter. To be admitted to the examination, a candidate must have completed a baccalaureate degree of at least one hundred twenty (120) collegiate-level semester hours of education or its equivalent at a college or university acceptable to the board. The education program shall include an accounting concentration or the equivalent as determined by the board to be appropriate in its rules and regulations. The examination shall cover branches of knowledge pertaining to accountancy as the board may deem proper. A total of one hundred fifty (150) collegiate-level semester hours of education shall be required before the board shall accept an application for a certified public accountant license under this chapter;

(d) To initiate investigations of certified public accountant and certified public accountant firm practices;

(e) To notify applicants who have failed an examination of such failure and in what branch or branches deficiency was found;

(f) To adopt and enforce such rules and regulations concerning certified public accountant examinee and licensee qualifications and practices and certified public accountant firm permits and practices as the board considers necessary to maintain the highest standard of proficiency in the profession of certified public accounting and for the protection of the public interest. The standards of practice by certified public accountants and certified public accountant firms shall include generally accepted auditing and accounting standards as recognized by the Mississippi State Board of Public Accountancy;

(g) To issue certified public accountant licenses under the signature and the official seal of the board as provided in this chapter; and to issue permits to practice public accounting to certified public accountant firms pursuant to such rules and regulations as may be promulgated by the board;

(h) To employ personnel;

(i) To contract for services and rent; and

(j) To adopt and enforce all such rules and regulations as shall be necessary for the administration of this chapter; provided, however, no adoption or modification of any rules or regulations of the board shall become effective unless any final action of the board approving such adoption or modification shall occur at a time and place which is open to the public and for which notice by mail or electronic mail of such time and place and the rules and regulations proposed to be adopted or modified has been given at least thirty (30) days prior thereto to every person who is licensed and registered with the board.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Codes, Hemingway's 1921 Supp. 661c; 1930, § 5913; 1942, § 8907; Laws, 1920, ch. 211; Laws, 1981, ch. 445, § 2; reenacted and amended, Laws, 1983, ch. 411 § 3; Laws, 1990, ch. 322, § 1; reenacted, Laws, 1991, ch. 306, § 3; Laws, 1997, ch. 588, § 57; Laws, 1999, ch. 533, § 3; Laws, 2016, ch. 477, § 2, eff from and after July 1, 2016.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Amendment Notes — The 2016 amendment rewrote (c), which read: "To set the fees and to regulate the time, manner and place of conducting examinations to be held under this chapter. Beginning February 1, 1995, a total of one hundred fifty (150) collegiate-level semester hours of education including a baccalaureate degree or its equivalent at a college or university acceptable to the board shall be required in order to sit for the examination by candidates who have not previously sat for the examination. The education program shall include an accounting concentration or the equivalent as determined by the board to be appropriate by rules and regulations. The examination shall cover branches of knowledge pertaining to accountancy as the board may deem proper"; and inserted "or electronic mail" in the last sentence of (j).

Cross References — Use of otherwise privileged communications in proceedings under this section, see § 73-33-16.

JUDICIAL DECISIONS

1. In general.

State Board of Public Accountancy was acting within its power when it revoked certified public accountant's license upon finding that accountant accepted commissions from clients for sales of securities as prohibited by Board's rules and regulations against accepting referral commissions; there was substantial evidence to support decision, and decision was not arbitrary, capricious, or in violation of accountant's rights. Mississippi State Bd. of Pub. Accountancy Acting as Bd. & Trial Bd. v. Gray, 674 So. 2d 1251 (Miss. 1996).

State's ban on certified public accountants' personal solicitation of prospective clients violated First Amendment guarantee of free speech as personal solicitation in question was commercial expression to which Amendment's protections applied. Rule threatened societal interests in broad access to complete and accurate commercial information, and although interests asserted by state to justify rule-prevention of fraud or overreaching and of potential clients' privacy and maintenance of fact and appearance of CPA independence-were substantial, state had not demonstrated that rule directly advanced such interests, and rule was not reasonable, content-neutral restriction, nor could it be justified as prophylactic rule. Edenfield v. Fane, 507 U.S. 761, 113 S. Ct. 1792, 123 L. Ed. 2d 543 (1993).

This section [Code 1942, § 8907] is a valid exercise of the police power of the state. Moore v. Grillis, 205 Miss. 865, 39 So. 2d 505; 10 A.L.R.2d 1425 (1949).

ATTORNEY GENERAL OPINIONS

Statutory provisions contemplate separate and distinct requirements that candidates must meet in order to obtain "certificate" on one hand and to obtain "license to practice" on other hand; therefore any rule or regulation which attempts to require candidate to meet more stringent requirements of license to practice as prerequisite to receiving certificate is unenforceable. Horton, August 23, 1990, A.G. Op. #90-0628.

RESEARCH REFERENCES

Am Jur. 1 Am. Jur. 2d, Accountants § 2.

1 Am. Jur. Pl & Pr Forms (Rev), Accountants, Forms 1 et seq. (regulation and licensing).

CJS. 53 C.J.S., Licenses §§ 58, 59, 63.

§ 73-33-7. Expenses, how paid; certificate and registration fees; exemptions.

(1) The Mississippi State Board of Public Accountancy is authorized to charge each applicant a fee for a certified public accountant license, firm permit and other applicable fees. However, no fee shall be required from any individual who has been granted a practice privilege, nor shall any fee be required from any firm that is exempt and does not register a permit as allowed under Section 73-33-1(3)(b) or (c). All fees shall be in such amounts as to be determined by the board and paid when the application is filed.

(2) Except as provided in Section 33-1-39, on or before January 1 of each year, each holder of a certified public accountant license issued by the Mississippi State Board of Public Accountancy shall register and pay a reasonable annual registration fee in such amount as to be determined by the board. If any certified public accountant fails to register and pay the annual registration fee on or before January 1, notice of such default shall be sent to the certified public accountant by certified mail to the delinquent registrant's last known address as shown by the records of the board. The license of any certified public accountant who fails to register and pay the annual registration fee within ten (10) days after notice is given shall be automatically cancelled, and the board shall enter the cancellation on its records.

(3) On or before January 1 of each year, each certified public accountant firm holding a permit to practice public accounting under Section 73-33-1 shall register with the board and pay a reasonable annual registration fee as determined by the board. If any firm fails to register on or before January 1, notice of such default shall be sent to the firm by certified mail to the firm's last known address as shown by the records of the board. The permit to practice of any firm that fails to register within ten (10) days after notice is given shall be automatically cancelled, and the board shall enter the cancellation on its records.

(4) Any person who has lost a certified public accountant license or a firm which has lost a permit to practice in this state by failure to register or failure to pay the annual registration fee if so required under this section, or who voluntarily cancels or surrenders such license or permit, may be again licensed or have a firm permit reinstated by the board without reexamination, provided

such person or firm shall again comply with the requirements of this chapter and the rules and regulations of the board; file application for registration; and, if required to pay a fee under this section, pay all fees in arrears, late fees and a reinstatement fee as set by the board.

(5) Out of the funds collected under this chapter shall be paid the expenses of the members of the board, including mileage, hotel expenses and per diem compensation as provided in Section 25-3-69, for the time expended in carrying out the duties of the office; however, no expense incurred by the board shall ever be charged against the funds of the state in excess of amounts collected under this section.

SOURCES: Codes, Hemingway's 1921 Supp. § 6661d; 1930, § 5914; 1942, § 8908; Laws, 1920, ch. 211; Laws, 1981, ch. 445, § 3; reenacted and amended, Laws, 1983, ch. 411 § 4; Laws, 1990, ch. 322, § 2; reenacted, Laws, 1991, ch. 306, § 4; Laws, 1999, ch. 533, § 4; Laws, 2007, ch. 309, § 26; Laws, 2008, ch. 331, § 3; Laws, 2010, ch. 408, § 3, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (3) by substituting "firm that fails" for "firm who fails" in the last sentence. The Joint Committee ratified the change at its July 22, 2010, meeting.

JUDICIAL DECISIONS

1. In general.

In a proceeding by a city for the ratification, approval and confirmation of an ordinance extending the city's corporate limits, a witness, who had passed the state department of public accountant's examination for certified public accountants, had been certified under this section [Code 1942, § 8908], and had made an audit of the city's records himself, was properly permitted to testify as to the assessed valuation of the property within the city and the amount of bonds which could be issued, without further qualification of his evidence. In re City of Phila., 232 Miss. 582, 100 So. 2d 100 (1958).

This section [Code 1942, § 8908] is a valid exercise of the police power of the state. Moore v. Grillis, 205 Miss. 865, 39 So. 2d 505, 10 A.L.R.2d 1425 (1949).

RESEARCH REFERENCES

Am Jur. 1 Am. Jur. 2d, Accountants § 4.

§ 73-33-8. Payment and deposit in state treasury of funds received by board of public accountancy.

All fees from examinations, certificates and licenses by the board of public accountancy, as established by Sections 73-33-3 et seq., and any other funds received by said board shall be paid to the state treasurer, who shall issue receipts therefor and who shall deposit such funds in the state treasury in a special fund to the credit of said board. All such funds shall be expended only pursuant to appropriation approved by the legislature and as provided by law.

SOURCES: Laws, 1973, ch. 381, § 5; reenacted and amended, Laws, 1983, ch. 411 § 5; Laws, 1984, ch. 488, § 278; reenacted, Laws, 1991, ch. 306, § 5, eff from and after July 1, 1991.

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

§ 73-33-9. Applicants of other states.

The Mississippi State Board of Public Accountancy may, in its discretion, issue a reciprocal certified public accountant license to practice to any holder of any certified public accountant's certificate or license issued under the law of another state, which shall entitle the holder to use the abbreviation, "CPA," in this state provided that the state issuing the original certificate or license grants similar privileges to the certified public accountants of this state. The fee for a license shall be in such reasonable amount as determined by the board. Such license shall not allow the holder thereof to engage in the practice of public accounting as a certified public accountant unless the holder meets the requirements of the Mississippi State Board of Public Accountancy. This section shall apply only to a person who wishes to obtain a license issued by the State of Mississippi and shall not apply to those persons practicing in this state under Section 73-33-17. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Codes, Hemingway's 1921 Supp. § 6661e; 1930, § 5915; 1942, § 8909; Laws, 1920, ch. 211; Laws, 1981, ch 445, § 4; reenacted and amended, Laws, 1983, ch. 411 § 6; Laws, 1990, ch. 322, § 3; reenacted, Laws, 1991, ch. 306, § 6; Laws, 1999, ch. 533, § 5; Laws, 2008, ch. 331, § 4; Laws, 2013, ch. 350, § 31; Laws, 2016, ch. 477, § 3, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment substituted "Section 73-33-17" for "Section 77-33-17" at the end of the next-to-last sentence.

Comparable Laws from other States — Alabama: Code of Ala. § 34-1-4.
Arkansas: A.C.A. § 17-12-308.
Florida: Fla. Stat. § 473.308.
Georgia: O.C.G.A. § 43-3-18.
Louisiana: La. R.S. § 37:76.
North Carolina: N.C. Gen. Stat. § 93-10.
South Carolina: S.C. Code Ann. § 40-11-290.
Tennessee: Tenn. Code Ann. § 62-1-117.
Texas: Tex. Occ. Code § 901.259.
Virginia: Va. Code Ann. § 54.1-4411.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 8909] is a valid exercise of the police power of the state. Moore v. Grillis, 205 Miss. 865, 39 So. 2d 505, 10 A.L.R.2d 1425 (1949).

§ 73-33-11. Revocation, cancellation, or suspension of certificates and licenses or imposition of civil penalty; powers of board of accountancy as trial board; costs; appeals.

(1) The Mississippi State Board of Public Accountancy may revoke, suspend, impose a civil penalty or take other appropriate action with respect to any license, practice privilege or permit issued pursuant to this chapter for any unprofessional conduct by the licensee or permit holder, or for other sufficient cause, provided written notice shall have been sent by certified mail to the holder thereof at holder's mailing address of record with the board, twenty (20) days before any hearing thereon, stating the cause for such contemplated action and appointing a day and a place for a full hearing thereon by the board, provided further, no certificate or license be cancelled or revoked until a hearing shall have been given to the holder thereof according to law. But, after such hearing, the board may, in its discretion, take action against any license, practice privilege or permit issued pursuant to this chapter. When payment of a civil penalty is assessed and levied by the board in accordance with this section, such civil penalty shall not exceed Five Thousand Dollars ($5,000.00) for each violation and shall be deposited into the special fund to the credit of the board.

(2) The members of the board are hereby empowered to sit as a trial board; to administer oaths (or affirmations); to summon any witness and to compel his attendance and/or his testimony, under oath (or affirmation) before the board or for purposes of deposition during any board authorized investigation; to compel the production of any book, paper or document by the owner or custodian thereof to a hearing or for purpose of investigation; and/or to compel any officer to produce, during investigation or at the hearing, a copy of any public record (not privileged from public inspection by law) in his official custody, certified to, by him. The board shall elect one (1) of its members to serve as clerk, to issue summons and other processes, and to certify copies of its records or, the board may delegate such duties to the executive director.

(3) The accused may appear in person and/or by counsel or, in the instance of a firm permit holder through its manager and/or counsel to defend such charges. If the accused does not appear or answer, judgment may be entered by default, provided the board finds that proper service was made on the accused.

(4) The minutes of the board shall be recorded in an appropriate minute book permanently maintained by the board at its office.

(5) In a proceeding conducted under this section by the board for disciplinary action, those reasonable costs that are expended by the board in the investigation and conduct of a proceeding for discipline, including, but not limited to, the cost of service of process, court reporters, expert witnesses,

investigators and legal fees may be imposed by the board on the accused, the charging party or both.

(6) Such costs shall be paid to the board upon the expiration of the period allowed for appeal of such penalties under this section, or may be paid sooner if the guilty party elects. Money collected by the board under this section shall be deposited to the credit of the board's special fund in the State Treasury. When payment of a monetary penalty assessed by the board under this section is not paid when due, the board shall have the power to institute and maintain proceedings in its name for enforcement of payment in the Chancery Court of the First Judicial District of Hinds County, Mississippi, or in the chancery court of the county where the respondent resides.

(7) In case of a decision adverse to the accused, appeal shall be made within thirty (30) days from the day on which the decision is made to the circuit court of the First Judicial District of Hinds County, Mississippi, or in the circuit court of the county in which the accused resides. In the case of a nonresident licensee, the appeal shall be made to the Circuit Court of the First Judicial District of Hinds County, Mississippi. The order of the board shall not take effect until the expiration of said thirty (30) days.

(8) In case of an appeal, bond for costs in the circuit court shall be given as in other cases; and the order of the board shall not take effect until such appeal has been finally disposed of by the court or courts.

(9) The board may, at any time, reinstate a license, practice privilege or permit if it finds that such reinstatement is justified.

(10) In addition to the reasons specified in the first paragraph of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Codes, Hemingway's 1921 Supp. § 6661h; 1930, § 5916; 1942, § 8910; Laws, 1920, ch. 211; reenacted and amended, Laws, 1983, ch. 411 § 7; reenacted, Laws, 1991, ch. 306, § 7; Laws, 1996, ch. 507, § 65; Laws, 1999, ch. 533, § 6; Laws, 2007, ch. 467, § 3; Laws, 2008, ch. 331, § 5; Laws, 2016, ch. 477, § 4, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment, in (1), substituted "certified mail to the holder thereof at holder's mailing address of record with the board, twenty" for "certified mail (with the addressee's receipt required) to the holder thereof, twenty" in the first sentence, and rewrote the next-to-last sentence, which read: "But, after such hearing, the board may, in its discretion, suspend the certified public accountant from practice as a certified public accountant in this state."

Cross References — Disclosure of otherwise privileged communications in proceedings under this section, see § 73-33-16.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

JUDICIAL DECISIONS

1. In general.

State Board of Public Accountancy was acting within its power when it revoked certified public accountant's license upon finding that accountant accepted commissions from clients for sales of securities as prohibited by Board's rules and regulations against accepting referral commissions; there was substantial evidence to support decision, and decision was not arbitrary, capricious, or in violation of accountant's rights. Mississippi State Bd. of Pub. Accountancy Acting as Bd. & Trial Bd. v. Gray, 674 So. 2d 1251 (Miss. 1996).

State's ban on certified public accountants' personal solicitation of prospective clients violated First Amendment guarantee of free speech as personal solicitation in question was commercial expression to which Amendment's protections applied. Rule threatened societal interests in broad access to complete and accurate commercial information, and although interests asserted by state to justify rule-prevention of fraud or overreaching and of potential clients' privacy and maintenance of fact and appearance of CPA independence-were substantial, state had not demonstrated that rule directly advanced such interests, and rule was not reasonable, content-neutral restriction, nor could it be justified as prophylactic rule. Edenfield v. Fane, 507 U.S. 761, 113 S. Ct. 1792, 123 L. Ed. 2d 543 (1993).

This section [Code 1942, § 8910] is a valid exercise of the police power of the state. Moore v. Grillis, 205 Miss. 865, 39 So. 2d 505, 10 A.L.R.2d 1425 (1949).

RESEARCH REFERENCES

ALR. Regulation of accountants. 70 A.L.R.2d 433.

Accountant's malpractice liability to client. 92 A.L.R.3d 396.

Validity, construction, and application of statute or regulation restricting use of terms such as "accountant," "public accountant," or "certified public accountant". 4 A.L.R.4th 1201.

Liability of independent accountant to investors or shareholders. 48 A.L.R.5th 389.

Tax preparers' willful assistance in preparation of false or fraudulent tax returns under § 7206(2) of Internal Revenue Code of 1954 (26 USCS § 7206(2)). 43 A.L.R. Fed. 128.

Disciplinary action under 31 USCS § 1026 authorizing Secretary of the Treasury to suspend and disbar any person representing claimants from further practice before the Treasury Department. 50 A.L.R. Fed. 817.

Am Jur. 1 Am. Jur. 2d, Accountants § 5.

Am Jur Pl & Pr Forms (Rev), Accountants, Forms 1-5.

1 Am. Jur. Pl & Pr Forms (Rev), Accountants, Forms 21 et seq. (rights and duties of accountants); Form 27.1 (complaint, petition, or declaration — allegation — failure of accountant to follow standard accounting practices); Form 27.2 (complaint, petition, or declaration — allegation — false or inaccurate reflection of financial condition); Form 27.3 (complaint, petition or declaration — allegation — failure to discover fraud); Form 27.4 (complaint, petition or declaration—allegation—erroneous advice to client).

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

26 Am. Jur. Trials 1, Accountant Malpractice: Work Papers.

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-33-12. Proceedings, records and work papers of review committee privileged.

(1) The following words and phrases as used in this section shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Firm" means a sole proprietorship, a corporation or a partnership.

(b) "Quality review" means a study, appraisal or review of one or more aspects of the professional work of a person or firm in the practice of public accountancy, including a quality assurance or peer review, or any internal review or inspection that is required by professional standards relating to quality control policies and procedures; provided, however, such term does not include a positive enforcement program of a state accountancy board.

(c) "Review committee" means any person or persons carrying out, administering or overseeing quality review.

(2)(a) The proceedings, records and work papers of a review committee shall be privileged and shall not be subject to discovery, subpoena or other means of legal process or introduction into evidence in any civil action, arbitration, administrative proceeding or Mississippi State Board of Public Accountancy proceeding and no member of the review committee or person who was involved in the quality review process shall be permitted or required to testify in any such civil action, arbitration, administrative proceeding or Mississippi State Board of Public Accountancy proceeding as to any matters produced, presented, disclosed or discussed during or in connection with the quality review process, or as to any findings, recommendations, evaluations, opinions or other actions of such committees, or any members thereof; provided, however, that information, documents or records that are publicly available are not to be construed as immune from discovery or use in any civil action, arbitration, administrative proceeding or Mississippi State Board of Public Accountancy proceeding merely because they were presented or considered in connection with the quality review process.

(b) Notwithstanding any provisions to the contrary in this chapter, the Mississippi State Board of Public Accountancy shall have access to reports of quality review results, including related letters of acceptance with recommendations and conditions, for use in a proceeding or trial board hearing involving the firm that is the subject of the quality or peer review.

(3) The privilege created by this section shall not apply to materials prepared in connection with a particular engagement merely because such materials happen to subsequently be presented or considered as part of the quality review process; nor does it apply to disputes between review committees and persons or firms subject to a quality review arising from the performance of the quality review.

SOURCES: Laws, 1991, ch. 306, § 12; Laws, 2016, ch. 477, § 5, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment added (2)(b).

§ 73-33-13. Penalties for practicing without licenses.

If any person shall: (a) falsely represent himself to the public as having received a certified public accountant license or falsely represent a firm in which he has an ownership interest to the public as having received a firm permit as provided in this chapter; or (b) falsely assume to practice as a certified public accountant; or (c) falsely use the abbreviation, "CPA," or any similar words or word, letters or letter to indicate that the person using the same is a certified public accountant, without having received a certified public accountant license as provided in this chapter or without qualifying for a practice privilege under Section 73-33-17; or (d) if any person having received a certified public accountant license and having lost such license by cancellation, revocation or suspension as provided by this chapter, shall continue to use the "CPA" abbreviation, use the words certified public accountant, or practice public accounting after losing his license; or (e) if any person shall represent that a CPA firm with a suspended or revoked permit in which he has an ownership interest is entitled to perform such practice, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a criminal fine of not less than Five Hundred Dollars ($500.00) or of not more than Five Thousand Dollars ($5,000.00), or by imprisonment in the county jail for not longer than six (6) months, or by both such fine and imprisonment, in the discretion of the court for each such an offense.

SOURCES: Codes, Hemingway's 1921 Supp. § 6661i; 1930, § 5917; 1942, § 8911; Laws, 1920, ch. 211; reenacted and amended, Laws, 1983, ch. 411 § 8; Laws, 1990, ch. 322, § 4; reenacted, Laws, 1991, ch. 306, § 8; Laws, 1999, ch. 533, § 7; Laws, 2008, ch. 331, § 6, eff from and after July 1, 2009.

Cross References — Injunctions to restrain illegal practice of profession, see § 73-51-1.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 8911] is a valid exercise of the police power of the state. Moore v. Grillis, 205 Miss. 865, 39 So. 2d 505, 10 A.L.R.2d 1425 (1949).

RESEARCH REFERENCES

Am Jur. 1 Am. Jur. 2d, Accountants §§ 2, 3.

CJS. 53 C.J.S., Licenses §§ 128-132.

§ 73-33-15. Violations; penalties; exceptions.

(1) It shall be unlawful for any person, except either a registered certified public accountant who is associated and registered with a firm permit holder or an individual qualifying for the practice privilege under Section 73-33-17, and/or for any firm, except for a certified public accountant firm that is in compliance with the applicable requirements of Section 73-33-1(3), to:

(a) Issue, sign or permit his name or firm name to be associated with any report, transmittal letter or other written communication issued as a result of an examination of financial statements or financial information which contains either an expression of opinion or other attestation as to the fairness, accuracy or reliability of such financial statements;

(b) Offer to perform, or perform, for the public, public accounting, tax consulting or other accounting-related services while holding himself out as a certified public accountant or as a firm of certified public accountants or certified public accountant firm; or

(c) Maintain an office or other facility for the transaction of business as a certified public accountant or certified public accountant firm.

(2) Any person or firm violating subsection (1) of this section shall be guilty of a misdemeanor, and may, upon conviction therefor, be punished by a criminal fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00), or by imprisonment in the county jail for not less than ten (10) days nor more than six (6) months, or by both such fine and imprisonment in the discretion of the court.

(3) In addition to any other penalty which may be applicable, the board may impose a civil penalty against any person adjudged by the board to be in violation of subsection (1) of this section. The civil penalty shall not exceed Five Thousand Dollars ($5,000.00) per violation and shall be deposited into the special fund to the credit of the board.

(4) The provisions of paragraph (a) of subsection (1) of this section shall not be construed to apply to an attorney licensed to practice law in this state; to a person for making statements as to his own business; to an officer or salaried employee of a firm, partnership or corporation for making an internal audit, statement or tax return for the same; to a bookkeeper for making an internal audit, statement or tax return for his employer, whose books he regularly keeps for a salary; to a receiver, a trustee or fiduciary as to any statement or tax return with reference to the business or property entrusted to him as such; to any federal, state, county, district or municipal officer as to any audit, statement, or tax return made by him in the discharge of the duties of such office.

(5) Nothing in this section shall prohibit a firm which does not hold a valid permit under Section 73-33-1(3) and which does not have an office in this state from providing its professional services in this state so long as it complies with the requirements of Section 73-33-1(3).

SOURCES: Codes, 1930, § 5918; 1942, § 8912; Laws, 1981, ch. 445, § 5; reenacted and amended, Laws, 1983, ch. 411 § 9; reenacted and amended, Laws, 1991,

ch. 306, § 9; Laws, 1992, ch. 318 § 1; Laws, 1999, ch. 533, § 8; Laws, 2007, ch. 467, § 4; Laws, 2008, ch. 331, § 7; Laws, 2010, ch. 408, § 4, eff from and after July 1, 2010.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 8912] insofar as it prohibits under penalty any person other than a certified public accountant or an attorney from receiving compensation for making or preparing any tax return is not a reasonable exercise of the police power, is not in promotion of the public welfare, and is without reasonable relation to the advancement of public convenience, health, morals, and safety, is arbitrarily discriminatory, and is an infringement of the right to pursue an occupation gainfully, and hence is in violation of the Constitution. Moore v. Grillis, 205 Miss. 865, 39 So. 2d 505, 10 A.L.R.2d 1425 (1949).

ATTORNEY GENERAL OPINIONS

Any rule which attempts to prohibit certificate holder who does not hold license to practice as CPA from engaging in those areas of public accounting which do not require or include written expression of opinion or other attestation as to fairness, accuracy or reliability of financial statements is unenforceable. Horton, August 23, 1990, A.G. Op. #90-0628.

RESEARCH REFERENCES

ALR. Constitutionality, construction, and application of statutory provisions respecting persons who may prepare tax returns for others. 10 A.L.R.2d 1443.

Tax preparer's liability to taxpayer in connection with preparation of tax returns. 81 A.L.R.3d 1119.

Liability of independent accountant to investors or shareholders. 48 A.L.R.5th 389.

Am Jur. 1 Am. Jur. 2d, Accountants §§ 2, 3.

1 Am. Jur. Pl & Pr Forms (Rev), Accountants, Form 27.1 (complaint, petition, or declaration — allegation — failure of accountant to follow standard accounting practices); Form 27.2 (complaint, petition, or declaration — allegation — false or inaccurate reflection of financial condition); Form 27.3 (complaint, petition or declaration — allegation — failure to discover fraud); Form 27.4 (complaint, petition or declaration — allegation — erroneous advice to client).

16 Am. Jur. Proof of Facts 2d 641, Accountant's Liability to Client For Negligent Performance of Duty.

26 Am. Jur. Trials 1, Accountant Malpractice Work Papers.

CJS. 53 C.J.S., Licenses §§ 128-132.

§ 73-33-16. Ownership of working papers; privileged communications.

(1) All statements, records, schedules, working papers and memoranda made by a certified public accountant incident to or in the course of professional services to clients by such certified public accountant, except reports submitted by a certified public accountant to a client, shall be and remain the property of the certified public accountant or the public accounting firm under

whose name the services were provided in the absence of an express agreement between the certified public accountant or public accounting firm and the client to the contrary. No such statement, record, schedule, working paper or memorandum shall be sold, transferred or bequeathed without the consent of the client or his personal representative or assignee to anyone other than one or more surviving partners or new partners of such certified public accountant or to his corporation or to his proprietorship or any combined or merged partnership or successor in interest therein.

(2) Except by permission of the client engaging a certified public accountant under this chapter, or the heirs, successors or personal representatives of such client, a certified public accountant and any partner, officer, shareholder or employee of a certified public accountant shall not be required by any court of this state to disclose, and shall not voluntarily disclose, information communicated to him by the client relating to and in connection with services rendered to the client by the certified public accountant in his practice as a certified public accountant. Such information shall be deemed confidential and privileged; provided, however, that nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements, or as prohibiting disclosures in court proceedings or in investigations or proceedings under Sections 73-33-5 and 73-33-11, when the services of the certified public accountant are at issue in such investigations or proceedings and the certified public accountant is a party thereto, or as prohibiting disclosure in the course of a practice review.

SOURCES: Laws, 1983, ch. 411, § 10; Laws, 1990, ch. 322, § 5; reenacted, Laws, 1991, ch. 306, § 10, eff from and after July 1, 1991.

JUDICIAL DECISIONS

1. Discovery.
2. Relationship to Miss. R. Evid. 501.

1. Discovery.

In a case in which a federal district court's jurisdiction was grounded in federal question jurisdiction, Miss. Code Ann. § 73-33-16 was inapplicable to a motion for a temporary stay of the court's order requiring production of tax returns and accountant-client communications. Since the court's jurisdiction was grounded in federal question jurisdiction, federal law determined the existence of a privilege, and no confidential accountant-client privilege existed under federal law, and no state-created privilege had been recognized in federal cases. Int'l Fire & Safety, Inc. v. H.C. Servs., — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 84601 (S.D. Miss. Oct. 30, 2007).

2. Relationship to Miss. R. Evid. 501.

In a case in which a district court determined that Miss. Code. Ann. § 73-33-16 was not applicable in regard to a motion for a temporary stay of an order by the court, even if § 73-33-16 governed, it was still not entirely clear whether the Mississippi accountant-client privilege would apply in light of the Mississippi Supreme Court's holding that statutory privileges were abrogated by the adoption of Miss. R. Evid. 501. The movants had not asserted a privilege provided by the Constitution of the United States or Mississippi, and the Mississippi Rules of Evidence did not provide for an accountant-client privilege. Int'l Fire & Safety, Inc. v. H.C. Servs., — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 84601 (S.D. Miss. Oct. 30, 2007).

RESEARCH REFERENCES

ALR. Privileged communications between accountant and client. 33 A.L.R.4th 539.

Am Jur. 1 Am. Jur. Legal Forms 2d, Accountants § 5:34.1 (confidentiality of information, generally); § 5:47 (return of working papers, records, and the like).

26 Am. Jur. Trials 1, Accountant Malpractice: Work Papers.

Law Reviews. McCormick, The Repealer: Conflicts in Evidence Created by Misapplication of Mississippi Rule of Evidence 1103. 67 Miss. L. J. 547, Winter, 1997.

§ 73-33-17. Reciprocity with other states.

(1) An individual whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that requires, as a condition of licensure, that an individual:

(a) Has at least one hundred fifty (150) semester hours of college education including a baccalaureate or higher degree conferred by a college or university;

(b) Achieves a passing grade on the Uniform Certified Public Accountant Examination; and

(c) Possesses at least one (1) year of experience verified by a licensee, including providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills, which may be obtained through government, industry, academic or public practice; shall be deemed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of licensees of this state without the need to obtain a license from the Mississippi State Board of Public Accountancy. Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person, or by mail, telephone or electronic means, under this section shall be granted practice privileges in this state, and may use the title "CPA" or "Certified Public Accountant," and no notice, fee or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements of subsection (3) of this section. In the implementation and application of paragraphs (a) through (c) of this subsection (1), the Mississippi State Board of Public Accountancy shall, for uniformity purposes with other states, consider how the majority of other states with similar provisions implement those provisions and shall be reasonably consistent with those states.

(2) An individual whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that does not meet the requirements of subsection (1) of this section, but the individual's certified public accounting qualifications are verified by the board's designee as substantially equivalent to those requirements, shall be deemed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of licensees of this state without the need to obtain a license from the Mississippi State Board of Public Accountancy. Any individual who passed the Uniform CPA Examination and holds a

valid license issued by any other state prior to January 1, 2012, may be exempt from the education requirement in subsection (1) of this section for purposes of this subsection. Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person, or by mail, telephone or electronic means, under this section shall be granted practice privileges in this state, and may use the title "CPA" or "Certified Public Accountant," and no notice, fee or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements of subsection (3) of this section.

(3) Any individual licensee of another state exercising the privilege afforded under this section and the firm which employs that licensee hereby simultaneously consent, as a condition of the grant of the privilege:

(a) To the personal and subject matter jurisdiction and disciplinary authority of the board;

(b) To comply with this chapter and the board's rules;

(c) That in the event the license from the state of the individual's principal place of business is no longer valid, the individual will cease offering or rendering professional services in this state individually and on behalf of a firm; and

(d) To the appointment of the state board which issued their license as their agent upon whom process may be served in any action or proceeding by this board against the licensee.

(4) An individual who has been granted practice privileges under this section who, for any entity with its home office in this state, performs any of the following services:

(a) Any financial statement audit or other engagement to be performed in accordance with Statements on Auditing Standards;

(b) Any examination of prospective financial information to be performed in accordance with Statements on Standards for Attestation Engagements; or

(c) Any engagement to be performed in accordance with PCAOB Auditing Standards;

may only do so through a firm which has obtained a permit issued under Section 73-33-1(3).

(5) A licensee of this state offering or rendering services or using their CPA title in another state shall be subject to disciplinary action in this state for an act committed in another state for which the licensee would be subject to discipline for an act committed in the other state. The board shall be required to investigate any complaint made by the State Board of Public Accountancy of another state.

SOURCES: Codes, 1930, § 5919; 1942, § 8913; reenacted, Laws, 1983, ch. 411, § 11; reenacted, Laws, 1991, ch. 306, § 11; Laws, 2008, ch. 331, § 8; Laws, 2010, ch. 408, § 5, eff from and after July 1, 2010.

Comparable Laws from other States — Alabama: Code of Ala. § 34-1-4. Arkansas: A.C.A. § 17-12-308.

Florida: Fla. Stat. § 473.308.
Georgia: O.C.G.A. §§ 43-3-11, 43-3-18.
Louisiana: La. R.S. § 37:76.
North Carolina: N.C. Gen. Stat. § 93-10.
South Carolina: S.C. Code Ann. § 40-11-290.
Tennessee: Tenn. Code Ann. § 62-1-117.
Texas: Tex. Occ. Code § 901.259.
Virginia: Va. Code Ann. § 54.1-4411.

RESEARCH REFERENCES

Am Jur. 1 Am. Jur. Pl & Pr Forms (Rev), Accountants, Form 14.

§ 73-33-18. Disclaimer by persons not subject to this chapter.

Nothing contained in this chapter shall be construed to prohibit anyone who is not a certified public accountant or an attorney in the practice of law in this state from preparing, reviewing, compiling or signing financial statements, including review statements, if an accompanying report, letter or other statement does not express an opinion or other attestation as to the fairness, accuracy or reliability of such statements and does include the language "I(we) do not express any opinion with respect to these financial statements."

SOURCES: Laws, 1983, ch. 411, § 12, eff from and after July 1, 1983.

RESEARCH REFERENCES

ALR. Liability of independent accountant to investors or shareholders. 48 A.L.R.5th 389.

Am Jur. 16 Am. Jur. Proof of Facts 2d 641, Accountant's Liability to Client For Negligent Performance of Duty.

§ 73-33-19. Person holding certificate without license on July 1, 1999 to be issued license automatically.

Any person holding on July 1, 1999, a certificate without a license registered with the Mississippi State Board of Public Accountancy shall automatically receive a certified public accountant's license. After July 1, 1999, the board shall not issue certificates without licenses and shall issue licenses only as provided under the provisions of this chapter.

SOURCES: Laws, 1999, ch. 533, § 9, eff from and after July 1, 1999.

Editor's Note — A prior § 73-33-19 [Laws, 1979, ch. 301, § 16; 1979, ch. 357, § 18; 1983, ch. 411, § 13] was repealed by Laws of 1991, ch. 306, § 13, effective from and after July 1, 1991. That section provided for the repeal of §§ 73-33-1 through 73-33-17 as of December 31, 1991.

CHAPTER 34

Real Estate Appraisers

Real Estate Appraiser Licensing and Certification Act 73-34-1
Mississippi Appraisal Management Company Registration Act 73-34-101

REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT

Sec.
73-34-1. Short title.
73-34-3. Definitions.
73-34-5. Persons required to obtain real estate appraisal license; exceptions; "significant professional assistance" defined.
73-34-7. Mississippi Real Estate Appraiser Licensing and Certification Board.
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73-34-37. Standards of professional appraisal practice and ethical rules.
73-34-39. Record keeping requirements for licensed appraisers; inspection of records.
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73-34-43. Formal decision of board on complaint; appeals; standard of review of decision of board.
73-34-45. Fees; Real Estate Appraisal License Fund.
73-34-47. Form and content of license; return of license; records of licenses.
73-34-49. Roster of licensed appraisers and registered appraisal management companies.
73-34-51. Nonresident applicants for license.
73-34-53. Penalties for violations; civil action by person aggrieved by violation.

73-34-55. No cause of action for services rendered by nonlicensed appraiser.
73-34-57. Board authorized to employ legal counsel.
73-34-59. Board authorized to implement rules and regulations necessary to bring chapter into compliance with federal requirements.
73-34-61. Repealed.
73-34-63. Severability.

§ 73-34-1. Short title.

This chapter shall be known and may be cited as "The Real Estate Appraiser Licensing and Certification Act."

SOURCES: Laws, 1990, ch. 576, § 1, eff from and after July 1, 1990.

Cross References — Licensing and regulation of home inspectors, see §§ 73-60-1 et seq.

RESEARCH REFERENCES

ALR. Liability to real-property purchaser for negligent appraisal of property's value. 21 A.L.R.4th 867.

§ 73-34-3. Definitions.

As used in this chapter, the following terms and phrases shall have the following meanings unless the context clearly indicates otherwise:

(a) "Appraisal" means an analysis, opinion or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate or identified real property performed in accordance with the Uniform Standards for Professional Appraisal Practice. An appraisal may be classified by the nature of the assignment into either a valuation assignment or an evaluation assignment. The term "valuation assignment" means an analysis, opinion or conclusion prepared by a real estate appraiser that estimates the value of an identified parcel of real estate or identified real property at a particular point in time. The term "evaluation assignment" means an analysis, opinion or conclusion prepared by a real estate appraiser that relates to the nature, quality or utility of identified real estate or identified real property.

(b) "Appraisal report" means any communication, written or oral, of an appraisal. For the purposes of this chapter, the testimony of an appraiser dealing with the appraiser's analyses, conclusions or opinions concerning identified real property is deemed to be an oral appraisal report.

(c) "Board" means the Mississippi Real Estate Appraiser Licensing and Certification Board that is established under the provisions of this chapter.

(d) "Certified appraisal report" means an appraisal report given or signed and certified as such by a state certified real estate appraiser. When a state certified real estate appraiser identifies an appraisal report as "certified," such state certified real estate appraiser must indicate which type of certification he holds. The certification of an appraisal report by a state certified real estate appraiser represents to the public that it meets the appraisal standards established under this chapter.

(e) "Commission" means the Mississippi Real Estate Commission as established under Section 73-35-5, Mississippi Code of 1972.

(f) "Licensed real estate appraiser" means a person who holds a current, valid appraisal license issued to him under the provisions of this chapter.

(g) "Real estate or real property" means an identified parcel or tract of land, with improvements, and includes easements, rights-of-way, undivided or future interest, or similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights, or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(h) "Real estate appraisal activity" means the act or process of making an appraisal of real estate or real property and preparing an appraisal report.

(i) "Real estate appraiser" means a person who engages in real estate appraisal activity for a fee or other valuable consideration.

(j) "Real property" means one or more defined interests, benefits or rights inherent in the ownership of real estate.

(k) "State certified real estate appraiser" means a person who holds a current, valid license as a real estate appraiser issued to him under the provisions of this chapter for certified real estate appraisers.

(*l*) "Timberland" means forest land that is producing, or which is capable of producing, timber as a crop.

(m) "Appraisal management company" means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party that oversees a network or panel of more than fifteen (15) certified or licensed appraisers in this state or twenty-five (25) or more nationally within a given year, that is authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets to:

(i) Recruit, select, and retain appraisers;

(ii) Contract with licensed and certified appraisers to perform appraisal assignments;

(iii) Manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

(iv) Review and verify the work of appraisers.

(n) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment, except that a quality control examination of an appraisal shall not be an appraisal review.

(o) "Appraiser" means an individual who holds a license or certification as an appraiser and is expected to perform valuation services competently and in a manner that is independent, impartial and objective.

(p) "Appraiser panel" means a group of licensed or certified independent appraisers that have been selected to perform appraisal services for a third party.

(q) "Controlling person" means:

(i) An officer or director, or owner of greater than a ten percent (10%) interest, of a corporation, partnership or other business entity, seeking to act as an appraisal management company in this state;

(ii) An individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with other persons for the performance of services requiring registration as an appraisal management company and has the authority to enter into agreements with appraisers for the performance of appraisals; or

(iii) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

(r) "Federal financial institutions regulatory agencies" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration.

(s) "Federally related transaction" means any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of an appraiser.

(t) "Person" means an individual, firm, partnership, limited partnership, limited liability company, association, corporation, or other group engaged in joint business activities, however organized.

(u) "Quality control examination" means an examination of an appraisal report for compliance and completeness including grammatical, typographical or other similar errors.

(v) "Real estate-related financial transaction" means any transaction involving:

(i) The sale, lease, purchase, auction, investment in or exchange of real property, including interests in property, or the financing thereof;

(ii) The refinancing of real property or interests in real property; and

(iii) The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(w) "Uniform Standards of Professional Appraisal Practice" means the current standards of the appraisal profession, developed for appraisers and users of appraisal services by the Appraisal Standards Board of the Appraisal Foundation.

(x) "USPAP" means the Uniform Standards of Professional Appraisal Practice.

SOURCES: Laws, 1990, ch. 576, § 2; Laws, 1993, ch. 559, § 1; Laws, 2011, ch. 458, § 17, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

Cross References — Mississippi Real Estate Appraiser Licensing and Certification Board, see § 73-34-7.

§ 73-34-5. Persons required to obtain real estate appraisal license; exceptions; "significant professional assistance" defined.

(1) Except as otherwise provided for in this section, it shall be unlawful for anyone to engage in real estate appraisal activity in this state without first obtaining one (1) of the four (4) real estate appraiser licenses as provided in this chapter.

(a) Any person who is engaged in real estate appraisal activity on July 1, 1990, shall continue through June 30, 1991, to be subject to the provisions of the Real Estate Brokers License Law of 1954, but, thereafter, all real estate appraisal activity shall be governed by and licensed pursuant to the provisions of this chapter. However, if the United States Congress or the Appraisal Subcommittee of the Federal Financial Institutions Examination Council extends the effective date for the use of certified or licensed appraisers in federally related transactions, then the above date of June 30, 1991, shall be extended to the date immediately preceding such extended effective date. In addition, if such appraisal subcommittee waives any requirement relating to certification or licensing of persons to perform appraisals in Mississippi, then such waiver shall also be effective in Mississippi under the Real Estate Appraiser Licensing and Certification Act and such requirement shall be waived by the Real Estate Appraiser Licensing and Certification Board until the waiver is terminated by the appraisal subcommittee. The Mississippi Real Estate Appraiser Licensing and Certification Board shall waive or modify statutory minimum requirements for hours of courses of study and provide by regulation for applicants who desire to do so to challenge the examinations, or one or some of them, by taking an examination on such courses without actually taking such courses, if such waivers or modifications are allowed or allowable under law or regulations adopted and promulgated by the United States Congress or the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(b) The provisions of this chapter shall not apply to any director, officer or salaried employee of commercial banks, savings banks, credit unions, and savings and loan associations, when engaged in appraisal or evaluation activities for and on behalf of such financial institution unless there is a fee charged for the appraisal or evaluation; provided that a federal statute, rule or regulation does not require such appraisal or evaluation activities to be performed by a state licensed appraiser.

(c) This section shall not be construed to apply to individuals who do not render significant professional assistance in arriving at a real estate appraisal analysis, opinion or conclusion. Examples of the type of assistance which are not considered "significant professional assistance" under this section include the following: (i) assistance in obtaining the data upon which the appraisal is based; (ii) assistance in the physical preparation of the appraisal report (such as taking photographs, preparing charts, maps or graphs, or typing or printing the report); and (iii) any other assistance that does not directly involve the exercise of judgment in arriving at the analysis, opinions or conclusions concerning real estate or real property set forth in the appraisal report.

(2) The provisions of this chapter shall not apply to:

(a) Any state, county, or municipal public officers or their salaried employees while performing their duties as such;

(b) The employees of private firms engaged pursuant to Section 27-35-165(2) (a) who perform work under the direction of the county tax assessor; or

(c) Private consultants hired pursuant to Section 27-35-165(2) (b) and all personnel employed or otherwise engaged by private consultants to appraise property who perform work under the direction of the county tax assessor.

(3) No license shall be issued under the provisions of this chapter to a corporation, partnership, firm or group.

(4) The provisions of this chapter shall not apply to individuals performing timber cruises, valuation on timberland real estate appraisals for nonfederally related transactions.

(5) The provisions of this chapter shall not apply to real estate licensees who are on active status and who perform a broker price opinion pursuant to Section 73-35-4.

SOURCES: Laws, 1990, ch. 576, § 3; Laws, 1991, ch. 475, § 1; Laws, 1993, ch. 559, § 2; Laws, 2003, ch. 468, § 5; Laws, 2011, ch. 464, § 1, eff from and after July 1, 2011.

Cross References — Real Estate Brokers License Law of 1954, see §§ 73-35-1 et seq.

Provisions governing registered foresters, see §§ 73-36-1 et seq.

Definition of "broker price opinion," see § 73-35-3.

JUDICIAL DECISIONS

1. In general.

Retired real estate appraiser who was qualified by knowledge, skill and experience to give opinion on effect of construction of boathouse on adjoining property's value was qualified to give expert testimony, notwithstanding his failure to maintain appraiser licenses following retirement. Watts v. Lawrence, 703 So. 2d 236 (Miss. 1997), reh'g denied, 702 So. 2d 133 (Miss. 1997).

ATTORNEY GENERAL OPINIONS

Nothing in Real Estate Appraiser Licensing and Certification Act requires banks or other lenders to have appraisal, as defined in statute, performed on real estate on which they make loans; furthermore, nothing in Act would keep bank officers from inspecting parcel of real estate, as long as inspection does not constitute "significant professional assistance," or from using forms developed for internal purposes for which no fee is charged, provided that resulting product does not constitute "appraisal." Tyrone, Dec. 18, 1992, A.G. Op. #92-0917.

County's tax assessor could require certain members of appraisal staff to obtain license under statute in order to add credibility to office and board of supervisors could pay for such education and training if board found on minutes, consistent with fact, that education of employee would benefit county. Young, July 30, 1993, A.G. Op. #93-0421.

A private for-profit company or individual cannot be exempt from § 73-34-5 and practice real estate appraisal without a license as an appraiser under § 27-3-52. Barber, Oct. 3, 2002, A.G. Op. #02-0374.

§ 73-34-7. Mississippi Real Estate Appraiser Licensing and Certification Board.

(1)(a) There is hereby established, as an adjunct board to the Mississippi Real Estate Commission, a board to be known as the Mississippi Real Estate Appraiser Licensing and Certification Board, which shall consist of six (6) members. Five (5) members shall be appointed by the Governor, with the advice and consent of the Senate, one (1) from each congressional district as such district existed on January 1, 1989; the Administrator of the Mississippi Real Estate Commission shall be an ex officio, nonvoting member.

(b) The initial appointments made by the Governor shall be in compliance with guidelines issued by the Federal Financial Institutions Examination Council or its designee; and the appointees shall serve for terms ending on December 31, 1991. Not more than two (2) positions on the board shall be filled with appointees who hold membership in the same professional appraisal organization.

(c) From and after January 1, 1992, gubernatorial appointments shall be made pursuant to the procedure established in this paragraph (c). The five (5) members shall be appointed by the Governor, with the advice and consent of the Senate, one (1) from each congressional district as such district existed on July 1, 2004, and one (1) from the state at large. The provisions of this paragraph (c) shall not affect persons who are members of the Real Estate Appraiser Licensing and Certification Board as of January 1, 2004. Such member shall serve out their respective terms, upon the expiration of which the provisions of this paragraph (c) shall take effect. Nothing provided herein shall be construed as prohibiting the reappointment of any member of the said board.

(d) At least three (3) members shall be certified general real estate appraisers or at least two (2) members shall be certified general real estate appraisers and one (1) member may be a certified residential real estate appraiser. Not more than two (2) positions on the board shall be filled with appointees who hold membership in the same professional appraisal organization. Of the initial appointments made pursuant to this paragraph (d), two (2) shall serve for three (3) years, two (2) shall serve for two (2) years and one (1) shall serve for one (1) year. Thereafter, each member shall serve for a term of four (4) years. Upon the expiration of a member's term, such member shall continue to serve until the appointment and qualification of a successor. Commencing with appointments made in 1992, no person shall be appointed as a member of the board for more than two (2) consecutive terms. The Governor may remove an appointed member for cause.

(2) The board shall meet not less than twice a calendar year. Written notice shall be given to each member of the time and place of each meeting of the board at least ten (10) days prior to the scheduled date of the meeting.

(3) A quorum of the board shall be three (3) voting members; commencing January 1, 1992, at least one (1) present must be a licensed certified general real estate appraiser or a certified residential real estate appraiser. Appointed members of the board are entitled to mileage and actual expenses as authorized by Section 25-3-41 and per diem as provided by Section 25-3-69; ex officio members are entitled to mileage and actual expenses only.

(4) The board shall elect a chairman and such other officers as it deems necessary. Such officers shall serve as such for terms established by the board.

SOURCES: Laws, 1990, ch. 576, § 4; Laws, 2004, ch. 412, § 1, eff from and after July 1, 2004.

Cross References — Mississippi Real Estate Commission, see § 73-35-5.

JUDICIAL DECISIONS

1. Appraisal standards.
2. Board member qualifications.

1. Appraisal standards.

Because the information required under Uniform Standards of Professional Appraisal Practice (USPAP) Rules 1-3 and 2-2, which had been adopted by Miss. Code Ann. § 73-34-7, was missing from appraisals, there was substantial evidence upon which to base a finding that the issuing appraiser had violated the USPAP and a disciplinary decision was not arbitrary and capricious. Miss. Real Estate Appraiser Licensing & Certification Bd. v. Schroeder, 980 So. 2d 275 (Miss. Ct. App. 2007).

2. Board member qualifications.

At the time of a disciplinary hearing held by the Mississippi Real Estate Appraiser Licensing and Certification Board, all of the board members had been duly appointed by the Governor, thereby making them public officials; thus, pursuant to Miss. Code Ann. § 25-1-37, the members of the board, even if serving in violation of Miss. Code Ann. 73-34-7(b) and (c), still had valid authority to act in official capacity as "de facto" officers. Miss. Real Estate

Appraiser Licensing & Certification Bd. v. Schroeder, 980 So. 2d 275 (Miss. Ct. App. 2007).

§ 73-34-9. Powers and duties of commission and board; immunity of members of commission and board.

(1) The commission shall have the following powers and duties:

(a) To receive applications for licensure as a real estate appraiser and applications for registration as an appraisal management company under this chapter; to establish appropriate administrative procedures for the processing of those applications; to issue licenses to qualified applicants under the provisions of this chapter; and to maintain a registry of the names and addresses of individuals who are currently licensed under this chapter.

(b) To administer licensing examinations in the places and at the times as may be required to carry out its responsibilities under this chapter.

(c) To implement recommendations made to the commission by the Real Estate Appraiser Licensing and Certification Board with respect to upgrading and improving the experience, education and examination requirements that are required for an appraiser license and each classification of licensed state certified real estate appraiser in this state.

(d) To implement recommendations made to the commission by the board with respect to upgrading and improving the continuing education requirements that are required for renewal of a license.

(e) To collect all licensing fees required or permitted by this chapter.

(f) To take appropriate action upon a decision and the related findings of fact made by the board if, after an administrative hearing, the board (i) determines that a licensed appraiser or a licensed state certified real estate appraiser under this chapter has violated the standards of appraisal practice or ethical rules established under Section 73-34-37, or has committed one or more of the acts that are prohibited by Section 73-34-35, and (ii) recommends that the license of the appraiser be suspended or revoked, that renewal be denied, or that some other disciplinary action be taken.

(g) To solicit bids and enter into contracts with one or more educational testing services or organizations approved by the board for the preparation of a bank of questions and answers for licensure examinations under this chapter.

(h) To promote research and conduct studies relating to the profession of real estate appraising and sponsor real estate appraisal educational activities.

(i) To adopt rules and regulations for the administration of this chapter that are not inconsistent with the provisions of this chapter or the Constitution and laws of Mississippi or of the United States.

(j) To employ an assistant to the Mississippi Real Estate Commission Administrator who shall keep a record of all proceedings, transactions, communications and official acts of the commission and board and perform any other duties as the commission and board may require.

(k) To employ an appropriate staff to investigate allegations that licensed appraisers or licensed state certified real estate appraisers under this chapter failed to comply with the terms or provisions of this chapter.

(*l*) To employ any other professional, clerical and technical assistance as may be necessary to properly administer the work of this chapter.

(2) The board shall have the following powers and duties:

(a) To be responsible for matters relating to real estate appraisal standards, real estate appraiser qualifications, testing standards, appraisal management companies and disciplinary functions.

(b) To hold meetings; to hold public hearings and administrative hearings; and to prepare examination specifications for licensed appraisers and licensed state certified appraisers.

(c) To enable the board to carry out its responsibilities under this chapter with respect to licensing and registering, the board shall have:

(i) The power to compel the attendance of witnesses;

(ii) The power to require a licensed appraiser or an applicant for licensure to produce books, appraisal documents, records and other papers;

(iii) The power to administer oaths; and

(iv) The power to take testimony and receive evidence concerning all matters within its jurisdiction.

These powers may be exercised directly by the board in such manner as the board shall determine.

(d) To establish appropriate administrative procedures for disciplinary proceedings conducted under the provisions of this chapter.

(e) To keep a record of its proceedings and issue an annual report of its activities.

(f) To further define by regulation, and with respect to each of the categories of licensed appraiser, the type of educational experience, appraisal experience and equivalent experience that will meet the statutory requirements of this chapter.

(g) To approve or disapprove applications for licensing or registration under this chapter.

(h) To suspend or revoke licenses or registrations under the disciplinary proceedings provided for in this chapter.

(i) To present an annual budget to the Mississippi Legislature for approval. A copy of the budget shall be given to the commission.

(j) To implement all requirements directed by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council or their designated agent.

(k) To make rules and regulations providing for an inactive license or registration status and for the reactivation thereof.

(*l*) To make rules and regulations necessary to implement its powers and duties under this chapter.

(m) To do all other things necessary to carry out the provisions of this chapter.

(n) To adopt rules consistent with the provisions of this chapter which may be reasonably necessary to implement, administer, and enforce the provisions of this chapter.

(o) To provide for at least one (1) member of the board to represent the appraisal management company industry.

(p) To establish the standard for measuring residential properties up to four (4) family buildings as promulgated by the American National Standards Institute or as provided in the American Measurement Standard Manual. The board shall require appraisals required to use those standards to indicate on the appraisal or separately appended document which standard was used.

(q) To conduct surveys as necessary.

(3) The members of the commission and board shall be immune from any civil action or criminal prosecution for initiating or assisting in any lawful investigation of the actions of, or participating in any disciplinary proceeding concerning, an appraiser licensed under this chapter, provided that the action is taken without malicious intent and in the reasonable belief that the action was taken in accordance with the powers and duties vested in the members of the commission and board under this chapter.

SOURCES: Laws, 1990, ch. 576, § 5; Laws, 1993, ch. 559, § 3; Laws, 2011, ch. 458, § 18; Laws, 2014, ch. 535, § 1, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (2)(b) by inserting the word "and" preceding "to prepare examination specifications." The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Note — Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

Cross References — Grounds for denial, suspension or revocation of license, see § 73-34-35.

Power of board to raise standards of professional appraisal and ethical rules, see § 73-34-37.

Fees, see § 73-34-45.

Additional powers of Real Estate Commission, see §§ 73-35-23, 73-35-27.

§ 73-34-11. License required to use title of certified real estate appraiser and to prepare and sign certified appraisal report.

No person other than a licensed certified real estate appraiser under this chapter shall assume or use that title or any title, designation or abbreviation likely to create the impression of certification as a real estate appraiser by this state.

An individual who has qualified as a licensed certified real estate appraiser under this chapter is authorized to prepare and sign a certified appraisal report relating to real estate or real property in this state. An individual who has not qualified as a licensed certified real estate appraiser under this chapter shall not prepare or sign any appraisal or appraisal report relating to real estate or real property in this state using the term "State Certified Appraisal Report" unless the report is also signed by a licensed certified real estate appraiser.

SOURCES: Laws, 1990, ch. 576, § 6, eff from and after July 1, 1990.

§ 73-34-13. Applications to be in writing accompanied by fee; pledge to comply with standards of professional appraisal practices; certification of understanding of conduct constituting misconduct.

Applications for one (1) of the appraisal licenses, applications for renewal, applications to take an examination, and applications for registration as an appraisal management company shall be made in writing to the commission on approved forms.

The payment of the appropriate fee, as fixed under Section 73-34-45, must accompany all applications for licensure and renewal thereof, all applications to take an examination and all applications for registration as an appraisal management company. At the time of filing an application for licensure under this chapter, for renewal, or for registration as an appraisal management company, each applicant shall sign a pledge to comply with the standards of professional appraisal practices that are established from time to time for licensed appraisers and for licensed certified real estate appraisers under this chapter. Each applicant shall also certify that he understands the types of misconduct, as set forth in this chapter, for which disciplinary proceedings may be initiated against a licensed appraiser or a licensed certified real estate appraiser.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Laws, 1990, ch. 576, § 7; Laws, 1993, ch. 559, § 4; Laws, 1997, ch. 588, § 58; Laws, 2011, ch. 458, § 19, effective December 1, 2013.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

Cross References — Knowingly making false statement, submitting false information or making material misrepresentation in application as grounds for denial, suspension or revocation of license, see § 73-34-35.

Nonresident applicants for license, see § 73-34-51.

§ 73-34-14. Background investigations required of applicants for real estate appraiser license or certification.

(1)(a) To qualify for a Mississippi real estate appraiser license, an applicant must have successfully been cleared for licensure through an investigation that shall consist of a determination that the applicant does not possess a background which calls into question public trust, as set forth below in subsection (2), and verification that the prospective licensee is not guilty of or in violation of any statutory ground for denial of licensure as set forth in Section 73-34-35.

(b) To assist the board in conducting its licensure investigation, on and after January 1, 2015, all applicants for a real estate appraiser license as a licensed real estate appraiser (license), licensed certified residential real estate appraiser (certification), or a licensed certified general real estate appraiser (certification), and all applicants for renewal of any real estate appraiser license or certification shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose.

(c) Any and all state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

(d) The board shall provide to the department the fingerprints of the applicant, any additional information that may be required by the department, and a form signed by the applicant consenting to the check of the criminal records and to the use of the fingerprints and other identifying information required by the state or national repositories.

(e) The board shall charge and collect from the applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant.

(2)(a) The board must ensure that applicants for a real estate appraiser license or certification do not possess a background that could call into question public trust. An applicant found by the board to possess a background which calls into question the applicant's ability to maintain public trust shall not be issued a real estate appraiser license or certification.

(b) The board shall not issue a real estate appraiser license or certification if:

(i) The applicant has had an appraiser license or certification revoked in any governmental jurisdiction within the five (5) year period immediately preceding the date of the application;

(ii) The applicant has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, or foreign court:

1. During the five-year period immediately preceding the date of the application for licensing or certification; or

2. At any time preceding the date of the application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.

(iii) The applicant has failed to demonstrate character and general fitness such as to command the confidence of the community and to warrant a determination that the appraiser will operate honestly, fairly and efficiently within the purpose of these criteria.

(c) The board shall evaluate and consider, by rules and regulations, additional background issues, including, but not limited to, those required by the Appraiser Qualifications Board of the Appraisal Foundation in compliance with federal requirements, prior to issuing (or taking disciplinary action against) a real estate appraiser.

(d) The board shall adopt rules and regulations necessary to implement, administer and enforce the provisions of this section.

SOURCES: Laws, 2014, ch. 363, § 1, eff from and after July 1, 2014.

§ 73-34-15. Activities authorized by real estate appraisal license.

A person licensed as a real estate appraiser is authorized to appraise all types of real estate and real property in this state, including but not limited to, commercial, industrial, residential and special purpose, provided that such appraisal does not involve federally related transactions which would require a certified appraisal.

SOURCES: Laws, 1990, ch. 576, § 8; Laws, 1993, ch. 559, § 5, eff from and after passage (approved April 9, 1993).

§ 73-34-17. Qualifications to be licensed real estate appraiser.

To qualify to be a licensed real estate appraiser, an applicant must:

(a) Successfully complete not less than seventy-five (75) classroom hours in courses of study approved by the board. Those seventy-five (75) classroom hours shall include coverage of the Uniform Standards of Professional Appraisal Practice and not less than thirty (30) classroom hours of study relating to the basic principles of land economics and/or the basic principles of real estate appraising.

(b) Pass an exam administered by the commission that is based upon required appraisal study and is designed to test an individual's knowledge of the basic principles of land economics and the basic principles of real estate appraising.

(c) Be trustworthy and competent to transact the business of real estate appraising.

(d) Comply with such other requirements as may be prescribed by the board.

The courses of study referred to in paragraph (a) above must (i) be conducted by an accredited university, college or junior college; (ii) be conducted by an approved appraisal society, institute or association; or (iii) be conducted by such other school as may be approved by the board; or (iv) consist of courses relating to appraisal education that were approved by the Mississippi Real Estate Commission prior to July 1, 1990.

SOURCES: Laws, 1990, ch. 576, § 9; Laws, 1993, ch. 559, § 6, eff from and after passage (approved April 9, 1993).

Cross References — Educational prerequisites to taking examination and experiential requirements, see § 73-34-21.

Grounds for denying license application, see § 73-34-35.

Mississippi Real Estate Commission established, see § 73-35-5.

RESEARCH REFERENCES

ALR. Liability to real-property purchaser for negligent appraisal of property's value, 21 A.L.R.4th 867.

§ 73-34-19. Two classes of real estate appraiser license; applications to specify classification of licensing; applicants to comply with requirements of board.

The following shall be the two (2) classes for licensed certified real estate appraisers:

(a) Licensed certified residential real estate appraiser. The licensed certified residential real estate appraiser classification shall consist of those persons who meet the requirements that relate to the appraisal of residential real property of one (1) to four (4) units without regard to transaction value or complexity. In addition, when nonfederally related transactions are involved, the licensed certified residential real estate appraiser shall enjoy the same privileges as set forth for the licensed real estate appraiser.

(b) Licensed certified general real estate appraiser. The licensed certified general real estate appraiser classification shall consist of those persons who meet the requirements relating to the appraisal of all types of real estate.

Each application for licensing as a licensed certified real estate appraiser, or for the renewal of a license, and each application to take an examination, shall specify the classification of licensing being applied for and, if applicable, the class of license previously granted. Each applicant shall be trustworthy and competent to transact the business of real estate appraising and comply with such other requirements as may be prescribed by the board.

SOURCES: Laws, 1990, ch. 576, § 10; Laws, 1993, ch. 559, § 7; Laws, 2014, ch. 400, § 1, eff from and after July 1, 2014.

Cross References — Status as licensed appraiser, licensed state certified Timberland Appraiser, or licensed state certified Residential Appraiser under this section as entitling tax assessor who also serves as a tax collector to additional annual compensation, see § 25-3-3.

Prerequisites to taking examinations for licenses, see § 73-34-21.

Grounds for denial, suspension or revocation of license, see § 73-34-35.

Appeals, see §§ 73-34-43.

Fees, see § 73-34-45.

Provisions governing registered foresters, see §§ 73-36-1 et seq.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

§ 73-34-21. Prerequisites to taking examinations for licensing; experience requirements for license.

(1)(a) As a prerequisite to taking the examination for licensing as a licensed certified residential real estate appraiser, an applicant shall present acceptable evidence that such applicant has successfully completed not less than two hundred (200) classroom hours in courses of study approved by the board. The two hundred (200) classroom hours must be in courses of study approved by the board which relate to real estate appraisal and shall include coverage of the Uniform Standards of Professional Appraisal Practice. The courses of study referred to above must be conducted by an accredited university, college or junior college; an appraisal society, institute association; or such other school approved by the Appraiser Qualifications Board of The Appraisal Foundation in compliance with federal requirements.

(b) Applicants applying prior to January 1, 2015, for licensure as a licensed certified residential real estate appraiser shall present, in addition to the above two hundred (200) classroom hours, evidence that such applicant has (i) successfully completed twenty-one (21) semester credit hours in specified collegiate subject matter courses from an accredited college or university, or (ii) attained an associate's degree or higher.

(c) Applicants applying on or after January 1, 2015, for licensure as a licensed certified residential real estate appraiser shall present, in addition to the above two hundred (200) classroom hours, evidence that such applicant has a bachelor's degree or higher (in any field) from an accredited college or university.

(2)(a) As a prerequisite to taking the examination for licensing as a licensed certified general real estate appraiser, an applicant shall present acceptable evidence that such applicant has successfully completed not less than three hundred (300) classroom hours in courses of study approved by the board. The three hundred (300) classroom hours must be in courses of study approved by the board which relate to real estate appraisal and shall include coverage of the Uniform Standards of Professional Appraisal Practice. The courses of study referred to above must be conducted by an accredited university, college or junior college; an appraisal society, institute association, or such other school approved by the Appraiser Qualifications Board of The Appraisal Foundation in compliance with federal requirements.

(b) Applicants applying prior to January 1, 2015, for licensure as a licensed certified general real estate appraiser shall present, in addition to the above three hundred (300) classroom hours, evidence that such applicant has (i) successfully completed thirty (30) semester credit hours in specified collegiate subject matter courses from an accredited college or university, or (ii) attained a bachelor's degree or higher.

(c) Applicants applying on or after January 1, 2015, for licensure as a licensed certified general real estate appraiser shall present, in addition to the above three hundred (300) classroom hours, evidence that such applicant has a bachelor's degree or higher (in any field) from an accredited college or university.

(3)(a) A license as a licensed certified residential real estate appraiser shall not be issued to any person who does not possess two thousand five hundred (2,500) hours of qualifying experience in real property appraisal obtained during no fewer than twenty-four (24) months, and supported by adequate written reports or file memoranda.

(b) A license as a licensed certified general real estate appraiser shall not be issued to any person who does not possess three thousand (3,000) hours of qualifying experience in real property appraisal obtained during no fewer than thirty (30) months, and supported by adequate written reports or file memoranda. One thousand five hundred (1,500) of these hours must be in nonresidential appraisal work.

SOURCES: Laws, 1990, ch. 576, § 11; Laws, 1993, ch. 559, § 8; Laws, 2014, ch. 363, § 2, eff from and after July 1, 2014.

Cross References — Knowledge required to be demonstrated through written examination, see § 73-34-23.

Mississippi Real Estate Commission established, see § 73-35-5.

§ 73-34-23. Knowledge required to be demonstrated through written examination prior to issuing license.

An original license as a licensed certified real estate appraiser shall not be issued to any person who has not demonstrated through a written examination process that he possesses the following:

(a) Appropriate knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing and economic concepts applicable to real estate;

(b) An understanding of the basic principles of land economics and the basic problems likely to be encountered in gathering, interpreting and processing the data that is required in the real estate appraisal process;

(c) An understanding of the standards for the development and communication of real estate appraisals as provided in this chapter;

(d) Knowledge of theories of depreciation, cost estimating, methods of capitalization, and the mathematics of real estate appraisal that are appropriate for the classification of licensure applied for;

(e) Knowledge of such other principles and procedures as may be appropriate for the classification of licensure applied for; and

(f) An understanding of the types of misconduct for which disciplinary proceedings may be initiated against a licensed certified real estate appraiser as set forth in this chapter.

SOURCES: Laws, 1990, ch. 576, § 12, eff from and after July 1, 1990.

Cross References — Examination prerequisites, see § 73-34-21.

§ 73-34-25. Expiration of license.

Except as provided in Section 33-1-39, a license issued under the authority of this chapter shall expire two (2) years from the last day of the month of issuance; however, a registration granted under the authority of this chapter shall expire one (1) year from the date of issuance.

SOURCES: Laws, 1990, ch. 576, § 13; Laws, 2007, ch. 309, § 27; Laws, 2011, ch. 458, § 20, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

The section's Sources information and Editor's note have been updated to reflect the effective date of the Mississippi Appraisal Management Company Registration Act, which was dependent upon all rules, forms and policies being finalized.

Cross References — Deadline for filing application for renewal of license, see § 73-34-27.

Continuing education requirements for license renewal, see § 73-34-33.

Fees for renewal license, see § 73-34-45.

§ 73-34-27. Application for renewal of license; late filing.

To obtain a renewal of any of the real estate appraisal licenses or a renewal of any registration issued under this chapter, the holder of a current, valid license or registration shall make application and pay the prescribed fee to the commission not earlier than one hundred twenty (120) days nor later than the expiration date, as defined in Section 73-34-25, of the license then held. Each application for renewal shall be accompanied by evidence, in the form prescribed by the board, of having completed the continuing education requirements for renewal specified in this chapter.

If a licensed appraiser or licensed certified real estate appraiser under this chapter fails to renew his license, or an appraisal management company fails to renew its registration before its expiration or within any period of extension granted under this chapter, that person or company may obtain a renewal of their license or registration by satisfying all of the requirements for renewal and filing an application for renewal, accompanied by a late renewal fee, within sixty (60) days of the date that the license or registration expired.

From and after January 1, 2015, all applicants for a real estate appraisal license renewal shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database pursuant to the provisions of Section 73-34-14.

SOURCES: Laws, 1990, ch. 576, § 14; Laws, 1993, ch. 559, § 9; Laws, 2011, ch. 458, § 21 effective December 1, 2013; Laws, 2014, ch. 363, § 3, eff from and after July 1, 2014.

Editor's Note — Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

Cross References — Expiration of license, see § 73-34-25.

Continuing education requirements for renewal of license, see § 73-34-33.

Grounds for denying application for license renewal, see § 73-34-35.

Fees for renewal license, delinquent renewal penalty, see § 73-34-45.

§ 73-34-29. Authority of board to deny issuance of license.

The board may, upon compliance with the provisions of this chapter relating to administrative hearings, deny the issuance of a license or registration to an applicant on any of the grounds provided in this chapter.

SOURCES: Laws, 1990, ch. 576, § 15; Laws, 2011, ch. 458, § 22, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

Cross References — Grounds for denial, suspension or revocation of license, see § 73-34-35.

§ 73-34-31. Term "certified real estate appraiser" to refer only to individual licensed.

The term "certified real estate appraiser" may only be used to refer to an individual who is a licensed certified real estate appraiser as provided by this chapter and may not be used following, or immediately in connection with, the name or signature of a firm, partnership, corporation or group, or in such manner that it might be interpreted as referring to a firm, partnership, corporation, group or to anyone other than the individual who is licensed as a licensed certified appraiser under this chapter. This requirement shall not be construed to prevent a licensed certified real estate appraiser from signing an appraisal report on behalf of a corporation, partnership, firm or group practice if it is clear that only the individual is licensed and that the corporation, partnership, firm or group practice is not.

SOURCES: Laws, 1990, ch. 576, § 16, eff from and after July 1, 1990.

Cross References — Grounds for denial, suspension or revocation of license, see § 73-34-35.

Formal decision of board and appeals, see § 73-34-43.

Penalties for violations, see § 73-34-53.

§ 73-34-33. Continuing education requirements for license renewal; requirements for inactive status license renewal; regulations generally.

(1) As a prerequisite to renewal of license, an active status licensed appraiser shall present evidence satisfactory to the board that such appraiser has met the continuing education requirements of this section. The basic continuing education requirement for renewal of a license shall be completed by the applicant, during the immediately preceding term of licensure, of not less than twenty (20) classroom hours of instruction in courses or seminars which have received the approval of the board. Inactive status licensees are not required to meet the continuing education requirements specified in this section; however, such inactive licensees, before activating their license to active status, shall cumulatively meet the requirements missed during the period their license was inactive.

(2) In lieu of meeting the requirements set forth above, an applicant for renewal may satisfy all or part of the requirements by presenting evidence of the following:

(a) Completion of an educational program of study determined by the board to be equivalent, for continuing education purposes, to courses or seminars approved by the board; or

(b) Participation, other than as a student, in educational processes and programs approved by the board which relate to real property appraisal theory, practices or techniques, including, but not necessarily limited to, teaching, program development and preparation of textbooks, monographs, articles and other instructional materials.

(3) The board shall develop regulations for the implementation of the provisions of this section to ensure that an individual who renews his license as a licensed appraiser or as a licensed certified real estate appraiser under this chapter has a working knowledge of current real estate appraisal theories, practices and techniques that will enable him to provide competent real estate appraisal services to the members of the public with whom he deals in a professional relationship under the authority of his licensure. The regulations developed by the board shall prescribe the following:

(a) Policies and procedures to be followed in obtaining board approval of courses of instruction and seminars;

(b) Standards, policies and procedures to be used by the board in evaluating an applicant's claims of equivalency; and

(c) Standards, monitoring methods, and systems for recording attendance to be employed by course and seminar sponsors as a prerequisite to board approval of courses and seminars for credit.

In developing and proposing regulations under this section, the board shall give consideration to courses of instruction, seminars and other appraisal education programs developed by or under the authority of organizations or associations of professional real estate appraisers which are utilized by such organizations or associations for the purpose of awarding real estate appraisal designations or indicating compliance with the continuing education requirements of such organizations or associations.

(4) No amendment or repeal of a regulation adopted by the board pursuant to this section shall operate to deprive a licensed appraiser or licensed certified real estate appraiser of credit toward renewal of such appraiser's license for any course of instruction or seminar that had been completed by such individual prior to the amendment or repeal of the regulation.

SOURCES: Laws, 1990, ch. 576, § 17; Laws, 1993, ch. 559, § 10, eff from and after passage (approved April 9, 1993).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second sentence in subsection (1). The words "shall be completion" were changed to "shall be completed." The Joint Committee ratified the correction at its May 20, 1998 meeting.

Cross References — Grounds for denial of renewal license, see § 73-34-35.

Fees for renewal license, see § 73-34-45.

Authority of board to implement rules and regulations to comply with minimum federal requirements, see § 73-34-59.

§ 73-34-35. Grounds for denial, suspension or revocation of license or registration, or other disciplinary action.

(1) An application for licensure or renewal may be denied, and the rights of any licensed appraiser or licensed certified real estate appraiser may be revoked or suspended, or the holder of the license may be otherwise disciplined, in accordance with the provisions of this chapter for any of the following acts or omissions:

(a) Failing to meet the minimum qualifications for licensure established under this chapter;

(b) Procuring or attempting to procure licensure under this chapter by knowingly making a false statement, submitting false information or making a material misrepresentation in an application filed with the commission or procuring or attempting to procure licensure through any form of fraud or misrepresentation;

(c) Paying money other than the fees provided for by this chapter to any member or employee of the commission or the board to procure licensure under this chapter;

(d) An act or omission in the practice of real estate appraising which constitutes dishonesty, fraud or misrepresentation with the intent to substantially benefit the licensee or another person or with the intent to substantially injure another person;

(e) Entry of a final civil or criminal judgment against a licensee on grounds of fraud, misrepresentation or deceit;

(f) Conviction, including a conviction based upon a plea or finding of guilty, of a crime which is substantially related to the qualifications, functions or duties of a person developing real estate appraisals and communicating real estate appraisals to others;

(g) Engaging in the business of real estate appraising under an assumed or fictitious name not properly registered in this state;

(h) Paying a finder's fee or a referral fee;

(i) Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(j) Issuing an appraisal on any real property in which the appraiser has an interest through fee simple ownership, leasehold, rental agreement or auction agreement;

(k) Taking a listing for the sale of a property within ninety (90) days of appraising such property, except as may be otherwise agreed upon by all parties and disclosed in the listing agreement; or

(*l*) Any act or conduct, whether the same or of a different character than specified above, which constitutes or demonstrates bad faith, incompetency or untrustworthiness; or dishonest, fraudulent or improper dealing; or any other violation of the provisions of this chapter and of rules and regulations established by the board.

(2) In accordance with the laws of this state, and to the extent permitted by any applicable federal legislation or regulation, the board may censure an appraisal management company, conditionally or unconditionally suspend or revoke any registration issued under this chapter, or deny renewal of any registration issued under this chapter, or levy fines or impose civil penalties not to exceed Five Thousand Dollars ($5,000.00), if after appropriate investigation the board concludes that an appraisal management company is attempting to perform, has performed, or has attempted to perform any of the following acts:

(a) Committed any act in violation of this chapter;

(b) Violated any rule or regulation adopted by the board in the interest of the public and consistent with the provisions of this chapter; or

(c) Procured a registration for itself or any other person by fraud, misrepresentation or deceit.

(3) In order to promote voluntary compliance, encourage appraisal management companies to correct errors promptly, and ensure a fair and consistent approach to enforcement, the board is authorized to impose fines or civil penalties that are reasonable in light of the nature, extent and severity of the violation. The board is also authorized to take action against an appraisal management company's registration, if at all, only after less severe sanctions have proven insufficient to ensure behavior consistent with this chapter. When deciding whether to impose a sanction permitted by subsection (2), determining the sanction that is most appropriate in a specific instance, or making any other discretionary decision regarding the enforcement of this chapter, the board shall consider whether an appraisal management company:

(a) Has an effective program reasonably designed to ensure compliance with this chapter;

(b) Has taken prompt and appropriate steps to correct and prevent the recurrence of any detected violations; and

(c) Has independently reported to the board any significant violations or potential violations of this chapter, before an imminent threat of disclosure or investigation and within a reasonably prompt time after becoming aware of their occurrence.

(4) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1990, ch. 576, § 18; Laws, 1993, ch. 559, § 11; Laws, 1996, ch. 507, § 66; Laws, 2011, ch. 458, § 23, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

The section's Sources information and Editor's note have been updated to reflect the effective date of the Mississippi Appraisal Management Company Registration Act, which was dependent upon all rules, forms and policies being finalized.

Cross References — Power of Real Estate Commission to take disciplinary action against appraisers who violate provisions of this section, see § 73-34-9.

Qualifications to be licensed real estate appraiser, see § 73-34-17.

Standards of professional appraisal practice and ethical rules, see § 73-34-37.

Licenses to be returned to commission upon suspension or revocation, see § 73-34-47.

Penalties, see § 73-34-53.

Investigations of any acts or omissions specified in this section, see § 73-34-41.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

JUDICIAL DECISIONS

1. Grounds for disciplinary action.

The Real Estate Appraiser Licensing and Certification Board has statutory authority to suspend a real estate appraiser's license for failure to turn over an appraisal report as an appraiser is required by statute to make all records required to be maintained under the provisions of the chapter available for inspection and copying and to keep for five years all appraisal reports that he prepares. Pope v. Miss. Real Estate, 811 So. 2d 438 (Miss. Ct. App. 2001).

RESEARCH REFERENCES

ALR. Liability to real-property purchaser for negligent appraisal of property's value. 21 A.L.R.4th 867.

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

§ 73-34-37. Standards of professional appraisal practice and ethical rules.

Each real estate appraiser licensed under this chapter must comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of professional appraisal practice are currently evidenced by the uniform standards of professional appraisal practice as directed by the Appraisal Subcommittee of the Federal Financial Institutions Examinations Council or its agent; however, after a public hearing held in accordance with the laws of this state applicable to public hearings, the board may make such modifications in excess of those standards as the board deems appropriate for this state.

SOURCES: Laws, 1990, ch. 576, § 19, eff from and after July 1, 1990.

Cross References — Power of Real Estate Commission to take disciplinary action against appraisers who violate provisions of this section, see § 73-34-9.

JUDICIAL DECISIONS

1. In general.

Record, taken as a whole, supported chancellor's findings that appraiser correctly declined to consider anticipated improvements to board of education trust lands if shopping mall development occurred for purposes of appraisal of value of trust lands to be used in setting lease terms, and that other alleged violations of Uniform Standards of Professional Appraisal Practice (USPAP) were not material and did not render appraisals incompetent; experts gave conflicting opinions on appropriateness of appraisals, and language in USPAP and advisory opinion clearly granted some discretion to appraiser. Broadhead v. Bonita Lakes Mall, Ltd. Partnership, 702 So. 2d 92 (Miss. 1997).

Not every breach of Uniform Standards of Professional Appraisal Practice (USPAP) by appraiser will render appraisal invalid; like other codes of ethics, USPAP is codified so that state licensing agencies may pursue those who continuously or materially breach ethical standards. Broadhead v. Bonita Lakes Mall, Ltd. Partnership, 702 So. 2d 92 (Miss. 1997).

§ 73-34-39. Record keeping requirements for licensed appraisers; inspection of records.

(1) A licensed real estate appraiser shall retain for a period of five (5) years the original or a true copy of: (a) each appraisal report prepared or signed by such real estate appraiser; and (b) all supporting data assembled and formulated by the appraiser in preparing each such appraisal report.

(2) The five-year period for retention of records is applicable to each engagement of the services of the appraiser and shall commence upon the date of the delivery of each appraisal report to the client unless, within such five-year period, the appraiser is notified that the appraisal or the appraisal report is involved in litigation, in which event a minimum of a two-year period for the retention of records shall commence upon the date of the final disposition of such litigation.

(3) Upon reasonable notice, a licensed real estate appraiser shall make all records required to be maintained under the provisions of this chapter available for inspection and copying by the board or its designated agent.

SOURCES: Laws, 1990, ch. 576, § 20; Laws, 1993, ch. 559, § 12, eff from and after passage (approved April 9, 1993).

§ 73-34-41. Investigations by commission; issuance of formal complaint; response to complaint; hearings.

The commission may investigate at the direction of the board the actions of an individual licensed or entity registered under this chapter or an applicant for licensure, renewal or registration. Upon compliance with the procedural requirements set forth in this chapter, the board may revoke or suspend the license or otherwise discipline a licensed appraiser, licensed certified real estate appraiser or registered appraisal management company, or deny an application or registration, for any of the acts or omissions set forth in Section 73-34-35.

Upon receipt of information indicating that a licensed appraiser, licensed certified real estate appraiser or a registered appraisal management company may have committed a violation under Section 73-34-35, the board may, upon compliance with the procedural requirements set forth in this chapter, revoke or suspend the license or otherwise discipline the licensee or registrant, or deny an application or registration, for any of the acts or omissions set forth in Section 73-34-35.

Upon receipt of information indicating that a licensed appraiser, licensed certified real estate appraiser or registered appraisal management company may have committed a violation under Section 73-34-35, the commission, at the direction of the board, may cause one or more of the investigators on its staff to make an investigation of the facts to determine whether or not there is evidence of any such violation. If technical assistance is required, a staff investigator may consult with not more than two (2) of the voting members of the board. If a voting member of the board is consulted and renders assistance in an investigation, such member shall be excused from service on the board in connection with any administrative hearing that results from such investigation.

In any investigation made by the commission's investigative staff, the board shall have the power to compel the attendance of witnesses and the production of books, appraisal documents, records and other papers, the power to administer oaths, and the power to take testimony and receive evidence concerning all matters within its jurisdiction.

If an investigation indicates that a licensed appraiser, licensed certified real estate appraiser or registered appraisal management company has committed a violation under Section 73-34-35, a formal complaint shall be prepared by the commission staff at the direction of the board and served upon such real estate appraiser or appraisal management company. This complaint shall require the accused party to file an answer to the complaint within twenty (20) days of the date of service.

In responding to a complaint filed by the staff of the commission, the accused party may admit the allegations of the complaint, deny the allegations of the complaint, or otherwise plead. Failure to make a timely response shall be deemed an admission of the allegations of the complaint.

Upon completion of the investigation of the complaint, the board shall set a date, time and place for an administrative hearing on the complaint.

SOURCES: Laws, 1990, ch. 576, § 21; Laws, 2011, ch. 458, § 24, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

The section's Sources information and Editor's note have been updated to reflect the effective date of the Mississippi Appraisal Management Company Registration Act, which was dependent upon all rules, forms and policies being finalized.

Cross References — Grounds for denial, suspension or revocation of license, see § 73-34-35.

Formal decision of board and appeals, see § 73-34-43.

Penalties for violations, see § 73-34-53.

JUDICIAL DECISIONS

1. In general.

The appellee was properly served with a formal complaint where she and her attorney received a letter that advised them of the date and time of the hearing, the nature and purpose of the hearing, and the rights to which she would be entitled, including the right to present evidence, to call and cross-examine witnesses, and to be represented by counsel. Mississippi Real Estate Appraiser Licensing & Certification Bd. v. James, 730 So. 2d 1135 (Miss. 1999).

RESEARCH REFERENCES

ALR. Liability to real-property purchaser for negligent appraisal of property's value. 21 A.L.R.4th 867.

§ 73-34-43. Formal decision of board on complaint; appeals; standard of review of decision of board.

If, at the conclusion of the hearing, the board determines that a licensed appraiser, licensed certified real estate appraiser or appraisal management company is guilty of a violation of any of the provisions of this chapter, it shall prepare a formal decision that shall contain findings of fact concerning the appropriate disciplinary action to be taken.

The decision and order of the board shall be final. Any applicant, licensee, registrant or person aggrieved by a decision or order of the board shall have the right of appeal from such adverse order or decision of the board to the circuit court of the county of residence of the applicant, licensee, registrant or person, or of the First Judicial District of Hinds County, within thirty (30) days from the service of notice of the action of the board upon the parties in interest. Notice of appeals shall be filed in the office of the clerk of the court who shall issue an order directed to the board commanding it, within ten (10) days after service thereof, to certify to the court its entire record in the matter in which the appeal has been taken. The appeal shall thereupon be heard in due course by the court, without a jury, which shall review the record and make its determination of the cause between the parties. To be effective, an application for review made by an aggrieved party must be filed within thirty (30) days after the party's receipt of the final decision and order of the board.

If an application is filed for review of a final decision and order of the board, the case shall be set for trial within sixty (60) days from the date of the filing of an answer for the board. If the court finds that the board has regularly pursued its authority and has not acted arbitrarily, it shall affirm the decision and order of the board.

Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SOURCES: Laws, 1990, ch. 576, § 22; Laws, 1996, ch. 507, § 67; Laws, 2011, ch. 458, § 25, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

The section's Sources information and Editor's note have been updated to reflect the effective date of the Mississippi Appraisal Management Company Registration Act, which was dependent upon all rules, forms and policies being finalized.

Cross References — Grounds for denial, suspension or revocation of license, see § 73-34-35.

Investigations by commission, formal complaints, see § 73-34-41.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

§ 73-34-45. Fees; Real Estate Appraisal License Fund.

(1) The commission shall charge and collect appropriate fees for its services under this chapter. The fees charged shall not exceed the amounts indicated below and shall be set by the board.

Application and examination	$225.00
Application only	$175.00
Initial and renewal license	$325.00
Delinquent renewal penalty	100% of renewal fee
For each change of address	$ 25.00
For each duplicate license	$ 25.00
To change status as a licensee from active to inactive	$ 25.00
For each bad check received by the commission	$ 25.00

(2)(a) The board shall establish the fee to be paid by each appraisal management company making application for registration under this chapter that is sufficient for the administration regulation and enforcement of the provisions of the Mississippi Appraisal Management Company Registration Act (Section 73-34-101 et seq.), but in no case shall the fee for initial registration be more than One Thousand Dollars ($1,000.00). However, beginning July 1, 2015, the board may increase the registration fee to an amount not to exceed One Thousand Five Hundred Dollars ($1,500.00) if the board finds the increase necessary for the regulation and enforcement of this chapter.

(b) The board may establish a similar fee, not to exceed One Thousand Dollars ($1,000.00), for the renewal of any registration, and a delinquent renewal penalty not to exceed one hundred percent (100%) of the renewal fee. However, beginning July 1, 2015, the board may increase the renewal fee to an amount not to exceed One Thousand Five Hundred Dollars ($1,500.00) if the board finds the increase necessary for the regulation and enforcement of this chapter, and a delinquent renewal penalty not to exceed one hundred percent (100%) of the renewal fee.

(3) The board may charge additional fees for its services which the board deems appropriate to carry out its intent and purpose. These additional fees shall not exceed the cost of rendering the service.

(4) All fees charged and collected under this chapter shall be paid by the commission at least once a week, accompanied by a detailed statement thereof, to the credit of the fund known as the "Real Estate Appraisal License Fund," hereby created in the State Treasury. All monies which are collected under this chapter shall be paid into and credited to the fund for the use of the board in carrying out the provisions of this chapter including the payment of salaries and expenses, printing an annual directory of licensees, and for educational purposes. The commission shall submit a monthly statement to the board detailing any expenses which it bears as a share in the expense of administering this chapter, for which expenses it shall be reimbursed in the amount approved by the board. The commission shall prepare an annual statement of income and expenses related to its appraisal-related administrative function.

SOURCES: Laws, 1990, ch. 576, § 23; Laws, 2011, ch. 458, § 26; Laws, 2012, ch. 531, § 1; Laws, 2014, ch. 400, § 2, eff from and after July 1, 2014.

Editor's Note — Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

Cross References — Requirement that fee specified in this section accompany all applications for licensure and renewals, see § 73-34-13.

§ 73-34-47. Form and content of license; return of license; records of licenses.

The commission at the direction of the board shall issue to each licensed appraiser or licensed certified real estate appraiser under this chapter a license evidencing such licensure. The commission shall at the direction of the board also issue a pocket card in such size and form as the board approves.

A license issued under this chapter shall bear a license number assigned by the commission. When signing an appraisal report or certified appraisal report, the licensee shall place such appraiser's license number adjacent to or immediately below the title of "licensed appraiser" or "licensed certified residential real estate appraiser" or "licensed certified general real estate appraiser" or "licensed timberland appraiser." Such license number shall also be used in all statements of qualification, contracts or other instruments used by the license holder when reference is made to such license holder's status as a licensed appraiser or licensed certified real estate appraiser.

The license must bear the current physical address of the licensee's place of business, which shall be a room either in his home or an office elsewhere, to be used for the transaction of the appraisal business. In case of removal from the designated address, the licensee shall make application to the commission before removal, or within ten (10) days after removal, designating the new location of such office, whereupon the commission at the direction of the board shall forthwith issue a new license for the new location.

Licenses and pocket cards shall remain the property of the state; and, upon any suspension or revocation of a license pursuant to this chapter, the individual holding the related license and pocket card shall immediately return such license and pocket card to the commission.

The commission shall maintain and keep open for public inspection during office hours a complete and properly indexed record of all applications for licensure received and licenses issued, renewed, revoked, cancelled or suspended under the provisions of this chapter. A copy of any such record, except pending investigation files, shall be made available to the public, upon application to the commission, at such reasonable price per copy as may be fixed by the commission.

SOURCES: Laws, 1990, ch. 576, § 24; Laws, 1993, ch. 559, § 13, eff from and after passage (approved April 9, 1993).

Cross References — Grounds for suspension or revocation of license, see § 73-34-35.

§ 73-34-49. Roster of licensed appraisers and registered appraisal management companies.

The commission shall prepare and issue at least once each calendar year a roster showing the name and place of business of each real estate appraiser currently licensed and appraisal management company registered under the provisions of this chapter. A copy of the roster shall be made available to the public, upon application to the commission, at a reasonable price per copy as may be fixed by the commission. The commission shall send a copy of this list to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, or its designated agent.

SOURCES: Laws, 1990, ch. 576, § 25; Laws, 2011, ch. 458, § 27, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

The section's Sources information and Editor's note have been updated to reflect the effective date of the Mississippi Appraisal Management Company Registration Act, which was dependent upon all rules, forms and policies being finalized.

§ 73-34-51. Nonresident applicants for license.

(1) Each applicant for licensure under this chapter who is not a resident of this state shall submit, with his application, an irrevocable consent that legal action arising out of his activities as a real estate appraiser in this state may be commenced against him in the proper court of any county of this state in which a cause of action may arise or in which the plaintiff may reside by service of process or pleading authorized by laws of this state, by the Secretary of State, or by the Administrator of the Mississippi Real Estate Commission. The consent shall stipulate that the service of process or pleading shall be taken in all courts to be valid and binding as if personal service had been made upon the nonresident licensee in this state. The consent shall be duly acknowledged. Every nonresident licensee shall consent to have any hearings conducted by the board pursuant to Section 73-34-35 at a place designated by the board.

(2) Any service of process or pleading shall be served on the Administrator of the Mississippi Real Estate Commission by filing duplicate copies, one (1) of which shall be filed in the office of the board and the other forwarded by certified mail to the last-known principal address of the nonresident licensee against whom the process or pleading is directed.

(3) If, in the determination of the board, another state or territory or the District of Columbia is deemed to have substantially equivalent licensure laws for real estate appraisers, an applicant for licensure in this state who is licensed under the law of such other state, territory or district may obtain a license as a real estate appraiser in this state upon such terms and conditions as may be determined by the board provided that disciplinary proceedings are not pending against such applicant in his state of licensure. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 1990, ch. 576, § 26; Laws, 2013, ch. 350, § 32; Laws, 2014, ch. 400, § 3, eff from and after July 1, 2014.

Comparable Laws from other States — Alabama: Code of Ala. § 34-27A-14
Arkansas: A.C.A. § 17-14-306.
Florida: Fla. Stat. § 475.631.
Georgia: O.C.G.A. § 43-39A-9.
Louisiana: La. R.S. § 37:3401.
North Carolina: N.C. Gen. Stat. § 93E-1-9.
South Carolina: S.C. Code Ann. § 40-60-37.
Tennessee: Tenn. Code Ann. § 62-39-322.
Virginia: Va. Code Ann. § 54.1-2016.

ATTORNEY GENERAL OPINIONS

Upon finding by Mississippi Real Estate Appraiser Licensing and Certification Board that another state has substantially equivalent licensure laws for real estate appraisers as does State of Mississippi, signing of reciprocal agreement requested by other state becomes ministerial task Administrator would be authorized to perform. Neelley, Sept. 30, 1992, A.G. Op. #92-0668.

§ 73-34-53. Penalties for violations; civil action by person aggrieved by violation.

(1) Except as otherwise provided in Section 73-34-35, any person violating a provision of this chapter shall, upon conviction of a first violation thereof, be punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for a term not to exceed ninety (90) days, or both. A second or subsequent violation shall be punishable by a fine of not less than One Thousand Dollars ($1,000.00) nor more than Two Thousand Dollars ($2,000.00), or by imprisonment for a term not to exceed six (6) months, or both.

(2) In case any person shall have received any sum of money, or the equivalent thereof, as commission, compensation or profit by or in consequence of his violation of any provision of this chapter, that person shall also be liable to a penalty of not less than the amount of the sum of money so received and not more than four (4) times the sum so received, as may be determined by the court, which penalty may be sued for and recovered by any person aggrieved, and for his use and benefit, in any court of competent jurisdiction.

SOURCES: Laws, 1990, ch. 576, § 27; Laws, 2011, ch. 458, § 28, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

Cross References — Investigations by commission, formal complaints, see § 73-34-41.

§ 73-34-55. No cause of action for services rendered by nonlicensed appraiser.

No person shall bring or maintain an action in any court of this state for the recovery of a commission, fee or compensation for any act done or services rendered, the doing or rendering of which is prohibited under the provisions of this chapter for persons other than licensed real estate appraisers, unless such person was duly licensed as a real estate appraiser at the time of the doing of such act or the rendering of such service.

SOURCES: Laws, 1990, ch. 576, § 28, eff from and after July 1, 1990.

§ 73-34-57. Board authorized to employ legal counsel.

The board may employ legal counsel to represent it in any proceedings when legal counsel is required.

SOURCES: Laws, 1990, ch. 576, § 29, eff from and after July 1, 1990.

§ 73-34-59. Board authorized to implement rules and regulations necessary to bring chapter into compliance with federal requirements.

If any provision of this chapter is found to be in noncompliance with the requirements of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council or its agent, the board is authorized to implement such rules and regulations as necessary to bring the requirements into federal compliance.

SOURCES: Laws, 1990, ch. 576, § 30; Laws, 1993, ch. 559, § 14, eff from and after passage (approved April 9, 1993).

Cross References — Authority of board to issue regulations, see § 73-34-33.

§ 73-34-61. Repealed.

Repealed by Laws of 1991, ch. 355, § 8, eff from and after July 1, 1991. [En Laws 1990, ch. 576, § 31]

Editor's Note — Former § 73-34-61 related to the reinstatement of an expired real estate broker's license or salesperson's license.

§ 73-34-63. Severability.

If any provision of this chapter or its application to any person or in any circumstance is declared by a court of competent jurisdiction to be invalid or unenforceable, provisions constituting the remainder of the act and the application of those provisions to other persons and in other circumstances shall not be affected.

SOURCES: Laws, 1990, ch. 576, § 32, eff from and after July 1, 1990.

MISSISSIPPI APPRAISAL MANAGEMENT COMPANY REGISTRATION ACT

SEC.

73-34-101. Short title.
73-34-103. Registration required; application [Repealed effective July 1, 2019].
73-34-105. Applicability of Sections 73-34-101 through 73-34-131.
73-34-107. Completion of irrevocable uniform consent to service of process.
73-34-109. Requirements of owners and controlling persons of appraisal management companies.
73-34-111. Designation of one controlling employee as contact for all communication between board and company.
73-34-113. Prohibited acts; required acts.
73-34-115. Proper level of licensure required for Standard 3 appraisal reviews.
73-34-117. Annual certifications to commission.
73-34-119. Retention of records.
73-34-121. Alteration or modification of completed appraisal report; use of appraisal report submitted by independent appraiser.
73-34-123. Registration numbers.
73-34-125. Violation.
73-34-127. Material failure of appraiser to comply with ethical or professional requirements in connection with certain consumer credit transactions.
73-34-129. Removal of independent appraiser from appraiser panel of appraisal management company.
73-34-131. Adjudicatory proceedings for violation of Sections 73-34-101 through 73-34-131.

§ 73-34-101. Short title.

Sections 73-34-101 through 73-34-131 shall be known and may be cited as the "Mississippi Appraisal Management Company Registration Act."

SOURCES: Laws, 2011, ch. 458, § 1, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

§ 73-34-103. Registration required; application [Repealed effective July 1, 2019].

(1) It is unlawful for a person to directly or indirectly engage or attempt to engage in business as an appraisal management company in this state or to advertise or hold itself out as engaging in or conducting business as an

appraisal management company in this state without first obtaining a registration issued by the Mississippi Real Estate Appraiser Licensing and Certification Board under the provisions of this chapter.

(a) An applicant for registration as an appraisal management company in this state shall submit to the Mississippi Real Estate Commission an application on a form or forms prescribed by the board accompanied by an original or certified copy of a surety bond payable to the State of Mississippi in the amount of Twenty Thousand Dollars ($20,000.00) for the use, benefit and indemnity of any person who suffers any damage or loss as a result of the appraisal management company's breach of contract or of any obligation arising therefrom or any violation of law.

(b) In the event a registration process is unavailable on December 1, 2013, an appraisal management company already conducting business in this state may continue to conduct business in accordance with Sections 73-34-101 through 73-34-131 until one hundred twenty (120) days after a registration process becomes available.

(2) An application for the registration required by subsection (1) of this section shall, at a minimum, include:

(a) The name of the person seeking registration and the fictitious name or names under which he does business in any state;

(b) The business address of the entity seeking registration;

(c) The phone contact information of the entity seeking registration;

(d) If the person is not a corporation that is domiciled in this state, the name and contact information for the person's agent for service of process in this state;

(e) The name, address, and contact information for any individual or any corporation, partnership, or other business entity that owns ten percent (10%) or more of the appraisal management company;

(f) The name, address, and contact information for one (1) controlling person designated as the main contact for all communication between the appraisal management company and the commission;

(g) A certification that the person has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license in good standing in this state under the Real Estate Appraiser Licensing and Certification Act if a license or certification is required to perform appraisals;

(h) A certification that the person requires appraisers completing appraisals at its request to comply with the Uniform Standards of Professional Appraisal Practice (USPAP), including the requirements for geographic and product competence;

(i) A certification that the person has a system in place to verify that only licensed or certified appraisers are used for federally related transactions;

(j) A certification that the person has a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under Section 129E of the Truth in Lending Act, including the requirements for payment of a reasonable and customary fee to appraisers when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of a consumer;

(k) A certification that the person maintains a detailed record of each service request that it receives and the appraiser that performs the residential real estate appraisal services for the appraisal management company;

(*l*) An irrevocable Consent to Service of Process required under Section 73-34-107;

(m) Any other information required by the board which is reasonably necessary to implement Sections 73-34-101 through 73-34-131.

(3) An application for the renewal of a registration shall include substantially similar information required for the initial registration as noted in subsection (2), as determined by the board.

(4) A registration granted by the commission under the provisions of Sections 73-34-101 through 73-34-131 shall be valid for one (1) year from the date on which it is issued.

(5) The provisions of this section shall stand repealed on July 1, 2019.

SOURCES: Laws, 2011, ch. 458, § 2; Laws, 2012, ch. 531, § 2; Laws, 2016, ch. 347, § 1, eff from and after July 1, 2016.

Editor's Note — At the direction of co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, "on December 1, 2013," was substituted for "upon the effective date of this act," in (1)(b).

Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

Amendment Notes — The 2016 amendment extended the date of the repealer in (5) by substituting "July 1, 2019" for "July 1, 2016."

Cross References — Real Estate Appraiser Licensing and Certification Act, see §§ 73-34-1 through 73-34-63.

Definition of "appraiser," "board," "commission" and "Uniform Standards of Professional Appraisal Practice," see § 73-34-3.

Form of application for registration, payment of fees, pledge to comply with standards of professional appraisal practices to accompany application, see § 73-34-13.

Registration expires one year from date of issuance, see § 73-34-25.

Renewal of registration, see § 73-34-27.

Denial of issuance of registration, see § 73-34-29.

Censure of company, suspension or revocation of registration, denial of renewal of registration, fines, civil penalties, see § 73-34-35.

Federal Aspects — Section 129E of the Truth in Lending Act, see 15 USCS § 1639e.

§ 73-34-105. Applicability of Sections 73-34-101 through 73-34-131.

(1) The provisions of Sections 73-34-101 through 73-34-131 shall not apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institutions regulatory agency.

(2) The provisions of Sections 73-34-101 through 73-34-131 shall not apply to a business entity that exclusively engages real estate appraisers on an employer and employee basis for the performance of all real property appraisal services in the normal course of its business, except to the extent that federal law or regulation requires such entities to register with and be subject to supervision by a state appraiser certifying and licensing agency.

SOURCES: Laws, 2011, ch. 458, § 3, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

Cross References — "Federal financial institutions regulatory agencies" as meaning the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration, see § 73-34-3.

§ 73-34-107. Completion of irrevocable uniform consent to service of process.

Each person applying for a registration as an appraisal management company that is not domiciled in this state shall complete an irrevocable uniform consent to service of process, as prescribed by the commission.

SOURCES: Laws, 2011, ch. 458, § 4, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

§ 73-34-109. Requirements of owners and controlling persons of appraisal management companies.

(1) An appraisal management company applying for registration in this state shall not:

(a) Be owned, in whole or in part, directly or indirectly, by any person who has had an appraiser license or certificate in this state or in any other state, refused, denied, cancelled, surrendered in lieu of revocation, or revoked; or

(b) Be owned by more than ten percent (10%) by a person who is not of good moral character, which for purposes of this section shall require that such person has not been convicted of, or entered a plea of nolo contendere to a felony relating to the practice of appraisal, banking, mortgage or the provision of financial services, or any crime involving fraud, misrepresentation or moral turpitude.

(2)(a) For purposes of subsection (1)(b) to qualify for initial registration and every third annual renewed registration thereafter as an appraisal management company, each individual owner of more than ten percent (10%) of an appraisal management company must have successfully been cleared for registration through an investigation that shall consist of a determination as to good moral character and verification that the owner is not guilty of or in violation of any statutory ground for denial of registration as set forth in this chapter. If no individual owns more than ten percent (10%) of the appraisal management company, then an investigation of an owner is not required, but in such instances, the controlling person designated by the appraisal management company shall be subject to the requirements of this subsection. If following the initial registration, any individual becomes either an owner of more than ten percent (10%) of the appraisal management company or the designated controlling person of the appraisal management company, then each such person shall be subject to the requirements of this subsection at the appraisal management company's next annual renewal. To assist the board in conducting its registration investigation, each individual owner of more than ten percent (10%) of an appraisal management company shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints, in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose.

(b) Any state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for registration, and shall be exempt from the Mississippi Public Records Act, Section 25-61-1 et seq.

Except upon written consent of the applicant, or by order of a court of competent jurisdiction, or when introduced into evidence in a hearing before the board to determine registration, no such information or records related thereto shall be released or otherwise disclosed by the board to any other person or agency.

(c) The board shall provide to the department the fingerprints of the applicant, any additional information that may be required by the department, a form signed by the applicant consenting to the check of the criminal records and to the use of the fingerprints and other identifying information required by the state or national repositories.

(d) The board shall charge and collect from the applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant.

SOURCES: Laws, 2011, ch. 458, § 5; Laws, 2014, ch. 519, § 1, eff from and after passage (approved Apr. 23, 2014.)

Editor's Note — Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

§ 73-34-111. Designation of one controlling employee as contact for all communication between board and company.

Each appraisal management company applying to the board for a registration in this state shall designate one (1) controlling person who is an employee of the appraisal management company that will be the designated contact for all communication between the board and the appraisal management company.

SOURCES: Laws, 2011, ch. 458, § 6, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

Cross References — Definition of "controlling person," see § 73-34-3.

§ 73-34-113. Prohibited acts; required acts.

(1) An appraisal management company doing business in this state as an appraisal management company shall not:

(a) Knowingly employ any individual to perform appraisal services, who has had a license or certificate to act as an appraiser in this state or in any other state, refused, denied, cancelled, surrendered in lieu of revocation, or revoked; or

(b) Knowingly enter into any independent contractor arrangement for the performance of appraisal services, in verbal, written, or other form, with any individual who has had a license or certificate to act as an appraiser in this state or in any other state, refused, denied, cancelled, surrendered in lieu of revocation, or revoked.

(2) Before assigning appraisal orders, the appraisal management company shall have a system in place to verify that a person being added to the appraiser panel holds the appropriate appraiser credential in good standing.

(3) Each appraisal management company doing business as an appraisal management company shall certify to the commission on an annual basis on a form prescribed by the commission that the appraisal management company has systems in place to verify that:

(a) An individual on the appraiser panel has not had a license or certification as an appraiser refused, denied, cancelled, revoked or surrendered in lieu of a pending revocation in the previous twelve (12) months; and

(b) Only licensed or certified appraisers are used to complete appraisal assignments in connection with federally related transactions.

SOURCES: Laws, 2011, ch. 458, § 7, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

§ 73-34-115. Proper level of licensure required for Standard 3 appraisal reviews.

Any employee of, or independent contractor to, the appraisal management company that performs a USPAP Standard 3 appraisal review of an appraisal report on property located in this state shall be an appraiser with the proper level of licensure in Mississippi. Quality control examinations are exempt from this requirement, as they are not considered a Standard 3 review.

SOURCES: Laws, 2011, ch. 458, § 8, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

§ 73-34-117. Annual certifications to commission.

(1) Each appraisal management company doing business in this state shall certify to the commission on an annual basis that it requires appraisers completing appraisals at its request to comply with the Uniform Standards of Professional Appraisal Practice, including the requirements for geographic and product competence.

(2) Each appraisal management company doing business in this state shall certify to the commission on an annual basis that it has a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under Section 129E of the Truth in Lending Act, including the requirement that fee appraisers be compensated at a customary and reasonable rate when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of a consumer.

(3) Each appraisal management company doing business in this state shall certify to the commission on an annual basis that it has a system in place requiring payment to an independent contract appraiser for the completion of an appraisal service within sixty (60) days after the appraiser provides the completed appraisal report to the appraisal management company, except in cases involving a bona fide breach of contract, substandard performance of services, or alternate payment terms agreed upon by the appraiser and the appraisal management company.

(4) An appraisal management company shall not prohibit an appraiser from reporting the fee paid to the appraiser in the body of the appraisal report, however an appraisal management company may require an appraiser to present any such disclosure in a specified format and location.

SOURCES: Laws, 2011, ch. 458, § 9, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

Federal Aspects — Section 129E of the Truth in Lending Act, see 15 USCS § 1639e.

§ 73-34-119. Retention of records.

Each appraisal management company doing business in this state shall certify to the board on an annual basis that it maintains a detailed record of each service request that it receives and the appraiser that performs the appraisal for the appraisal management company. Records shall be retained for a period of five (5) years after an appraisal is completed or two (2) years after final disposition of a judicial proceeding related to the assignment, whichever period expires later.

SOURCES: Laws, 2011, ch. 458, § 10, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

§ 73-34-121. Alteration or modification of completed appraisal report; use of appraisal report submitted by independent appraiser.

(1) An appraisal management company may not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser without the appraiser's written consent, except as necessary to comply with regulatory mandates or legal requirements.

(2) An appraisal management company may not use an appraisal report submitted by an independent appraiser, or any of the data or information contained therein, for any purpose other than its intended use without the appraiser's or the intended end user's written consent, except as necessary to comply with regulatory mandates or legal requirements.

SOURCES: Laws, 2011, ch. 458, § 11, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

§ 73-34-123. Registration numbers.

(1) The board shall issue a unique registration number to each appraisal management company that is registered in this state pursuant to Sections 73-34-101 through 73-34-131.

(2) The board shall maintain and publish a list of the appraisal management companies registered in this state and the registration numbers assigned to such persons.

(3) An appraisal management company registered in this state shall disclose the registration number provided to it by the board on the engagement documents presented to the appraiser.

SOURCES: Laws, 2011, ch. 458, § 12, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

§ 73-34-125. Violation.

It shall be a violation of Sections 73-34-101 through 73-34-131 for any employee, partner, director, officer or agent of an appraisal management company to:

(a) Influence or attempt to influence the development, reporting, result or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery or in any other manner, including, but not limited to:

(i) Withholding or threatening to withhold timely payment or partial payment for an appraisal with the exception of a substandard or noncompliant appraisal;

(ii) Withholding or threatening to withhold future business from an appraiser, or demoting, terminating or threatening to demote or terminate an appraiser;

(iii) Promising or implying that an appraiser may be given opportunities for future business, promotions or increased compensation;

(iv) Conditioning an assignment of an appraisal or the payment of an appraisal fee or salary or bonus on the opinion, conclusion or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser;

(v) Requesting that an appraiser provide an estimated, predetermined or desired valuation in an appraisal, or provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal;

(vi) Providing to an appraiser an anticipated, estimated, encouraged or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided; and

(vii) Requiring an appraiser to prepare an appraisal report if the appraiser has indicated to the appraisal management company that he or she does not have the necessary expertise for the specific geographic area;

(b) Require an appraiser to indemnify the appraisal management company against liability, damages, losses or claims other than those liabilities, damages, losses or claims arising out of the services performed by the appraiser, including performance or nonperformance of the appraiser's duties and obligations, whether as a result of negligence or willful misconduct;

(c) Submit or attempt to submit false, misleading or inaccurate information in any application for registration or renewal;

(d) Fail to timely respond to any subpoena or any other legally binding request for information;

(e) Fail to timely obey a lawful administrative order of the board; or

(f) Fail to fully cooperate in any board investigation.

SOURCES: Laws, 2011, ch. 458, § 13, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

§ 73-34-127. Material failure of appraiser to comply with ethical or professional requirements in connection with certain consumer credit transactions.

An appraisal management company that has a reasonable basis to believe an appraiser has failed to comply with applicable laws, the Uniform Standards of Professional Appraisal Practice or other ethical or professional requirements in connection with a consumer credit transaction secured by a consumer's principal dwelling, shall refer the matter to the agency if the failure to comply is material. For purposes of this section, a failure to comply is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

SOURCES: Laws, 2011, ch. 458, § 14, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

§ 73-34-129. Removal of independent appraiser from appraiser panel of appraisal management company.

(1)(a) Except within the first ninety (90) days after an independent appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company may not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraisal services to an independent appraiser without:

(b) Notifying the appraiser in writing of the reasons why the appraiser is being removed from the appraiser panel of the appraisal management company;

(c) If the appraiser is being removed from the panel for illegal conduct, violation of USPAP, or a violation of state licensing standards, notifying the appraiser of the nature of the alleged conduct or violation;

(d) Providing an opportunity for the appraiser to respond to the notification of the appraisal management company.

(2) An appraiser who is removed from the appraiser panel of an appraisal management company for alleged illegal conduct, violation of USPAP, or violation of state licensing standards, may file a complaint with the board for a review of the decision of the appraisal management company. The scope of the commission's review in any such case is limited to determining whether the appraisal management company has complied with subsection (1) and whether illegal conduct, a violation of USPAP, or a violation of state licensing standards has occurred.

(3) If an appraiser files a complaint against an appraisal management company under subsection (2), the commission shall adjudicate the complaint within one hundred eighty (180) days.

(4) If after opportunity for hearing and review, the commission determines that an appraisal management company acted improperly in removing the appraiser from the appraiser panel, or that the appraiser did not commit a violation of law, a violation of USPAP, or a violation of state licensing standards, the commission shall:

(i) Provide written findings to the involved parties;

(ii) Provide an opportunity for the appraisal management company and/or the appraiser to respond to the findings; and

(iii) Make recommendations for action.

SOURCES: Laws, 2011, ch. 458, § 15, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

Cross References — Definition of "appraiser panel" and "USPAP," see § 73-34-3.

§ 73-34-131. Adjudicatory proceedings for violation of Sections 73-34-101 through 73-34-131.

The conduct of adjudicatory proceedings in accordance with applicable state laws for violations of Sections 73-34-101 through 73-34-131 is vested in the commission, such that:

(a) Before censuring any registrant, or suspending or revoking any registration, the commission shall notify the registrant in writing of any charges made at least twenty (20) days before the date set for the hearing and shall afford the registrant an opportunity to be heard in person or by counsel.

(b) The written notice shall be satisfied by personal service on the controlling person of the registrant, or the registrant's agent for service of process in this state, or by sending the notice by certified mail, return receipt requested to the controlling person of the registrant to the registrant's address on file with the commission.

(c) The hearing on the charges shall be at a time and place prescribed by the commission and in accordance with the applicable state laws.

(d) The commission may make findings of fact and shall deliver or mail such findings to the registrant charged with an offense under Sections 73-34-101 through 73-34-131.

SOURCES: Laws, 2011, ch. 458, § 16, effective December 1, 2013.

Editor's Note — Laws of 2011, ch. 458, § 29, provides:

"SECTION 29. Sections 1 through 16 of this act shall be codified in Chapter 34, Title 73, Mississippi Code of 1972."

Laws of 2011, ch. 458, § 30, provides:

"SECTION 30. This act shall take effect and be in force from and after July 1, 2011, or one hundred twenty (120) days after the first date on which all rules, forms and policies have been finalized and made available by the commission, whichever is later."

All rules, forms, and policies have been finalized and made available by the Mississippi Real Estate Commission. The effective date of the Mississippi Appraisal Management Company Registration Act is December 1, 2013.

CHAPTER 35

Real Estate Brokers

In General 73-35-1
Interest on Real Estate Brokers' Escrow Accounts Act 73-35-101

IN GENERAL

Sec.
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73-35-37. Repealed.

§ 73-35-1. Citation of chapter; license requirement.

This chapter shall be known, and may be cited, as "the Real Estate Brokers License Law of 1954"; and from and after May 6, 1954, it shall be unlawful for any person, partnership, association or corporation to engage in or carry on, directly or indirectly, or to advertise or to hold himself, itself or themselves out as engaging in or carrying on the business, or act in the capacity of, a real estate broker, or a real estate salesperson, within this state, without first obtaining a license as a real estate broker or real estate salesperson as provided for in this chapter.

SOURCES: Codes, 1942, § 8920-01; Laws, 1954, ch. 318, § 1; reenacted, Laws, 1980, ch. 499, § 1; Laws, 1988, ch. 477, § 1, eff from and after January 1, 1989.

Cross References — Application of Real Estate Appraiser Licensing and Certification Act to appraisers subject to Real Estate Brokers License Law, see § 73-34-5.

Provisions applicable to real estate appraisers, see § 73-35-1.

Real estate broker and real estate salesperson defined, see § 73-35-3.

Licenses issued to businesses entities, see § 73-35-6.

Qualifications for licensure, see § 73-35-7.

Injunctive relief under this chapter, see § 73-35-23.

Injunctions to restrain illegal practice of profession, see § 73-51-1.

Licensing and regulation of home inspectors, see §§ 73-60-1 et seq.

JUDICIAL DECISIONS

1. In general.
2. Summary judgment.

1. In general.

Georgia realty company was not entitled to a commission on a real estate deal in Mississippi that was never consummated because the company, through its agent, acted as a broker in Mississippi without first being duly licensed in the state. Therefore, it could not maintain an action in any court of the state for the recovery of a commission, fee, or compensation. Transnational Ventures, Inc. v. Derr Plantation, 187 So. 3d 185 (Miss. Ct. App. 2016).

Even assuming that real estate investors had been able to show that a financial advisor for property owners acted as a real estate broker without a license, in violation of Miss. Code Ann. § 73-35-1, the investors failed to show that they were aggrieved by his alleged violation of this law because they did not pay his fee, and they did not present any other evidence showing that they were aggrieved by his actions. Marsh v. Wallace, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 98273 (S.D. Miss. Oct. 20, 2009).

Real estate investors failed to show that a financial advisor for property owners acted as a real estate broker without a license, in violation of Miss. Code Ann. § 73-35-1, particularly as the compensation he received with respect to the transaction was for his services as the owners' financial advisor, and the closing documents stated that there was no real estate broker involved in the transaction. Marsh v. Wallace, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 98273 (S.D. Miss. Oct. 20, 2009).

Appellee negotiated for an option to purchase real property; he asked a friend to purchase the land and split the profits with him when the land was resold. Appellee did not act as a real estate broker in violation of Miss. Code Ann. § 73-35-1; he did not request or receive a fee. Davis v. Paepke, 3 So. 3d 131 (Miss. Ct. App. 2009).

Mississippi Court of Appeals interprets Miss. Code Ann. § 73-35-31 to apply to situations in which a foreign broker or agent receives a commission from either the buyer or the seller, so that the foreign broker or agent is penalized for his unlicensed transaction, and therefore a Mississippi broker was not "aggrieved" simply because he was seeking an expected commission. Leary v. Stockman, 937 So. 2d 964 (Miss. Ct. App. 2006).

Real estate broker was subject to discipline by State Real Estate Commission, after having made alleged misrepresentations as to condition of house, even though broker was also vendor. Mississippi Real Estate Comm'n v. Hennessee, 672 So. 2d 1209 (Miss. 1996).

The defendant was properly convicted of acting as a real estate broker without a license where the evidence established that he had held himself out to the owners of a motor inn as a possible middle man for foreign investors who were interested in purchasing the inn and where he had obtained a non-exclusive listing to sell the establishment; the fact that the defendant could have purchased the hotel on his own as a principal was immaterial and not inconsistent with his also having obtained a listing from the owners to sell the hotel to others. Mitchell v. State, 402 So. 2d 329 (Miss. 1981).

2. Summary judgment.

Defendant was not entitled to summary judgment on a claim that defendant improperly acted as a real estate broker in violation of Miss. Code Ann. §§ 73-35-1 et seq., because plaintiffs' claims of fraud, conspiracy, and negligent misrepresentation created issues that defendant was improperly acting as a broker and issues concerning whether or not plaintiffs were aggrieved by defendant's actions. Marsh v. Wallace, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 72965 (S.D. Miss. Aug. 22, 2008).

RESEARCH REFERENCES

ALR. Real-estate broker's right to recover in quantum meruit for services although contract is not in writing as required by statute. 41 A.L.R.2d 905.

Power of real-estate broker to execute contract of sale in behalf of principal. 43 A.L.R.2d 1014.

Broker's right to commission for selling part of property. 47 A.L.R.2d 680.

Real-estate broker's power to bind principal by representations as to character, condition, location, quantity, or title of property. 58 A.L.R.2d 10.

Licensed real-estate broker's right to compensation as affected by lack of license on the part of partners, coadventurers, employees, or other associates. 8 A.L.R.3d 523.

Validity, construction, and effect of real-estate brokers' multiple-listing agreement. 45 A.L.R.3d 190.

Failure of real-estate broker to disclose to principal fee-splitting agreement with adverse party, or adverse party's broker, as breach of fiduciary duty barring claim for commission. 63 A.L.R.3d 1211.

Recovery back of money paid to unlicensed person required by law to have occupation or business license or permit to make contract. 74 A.L.R.3d 637.

Procurement of real-estate broker's license subsequent to execution of contract for services as entitling broker to compensation for services. 80 A.L.R.3d 318.

Necessity of having real estate broker's license in order to recover commission as affected by fact that business sold includes real property. 82 A.L.R.3d 1139.

Modern view as to right of real estate broker to recover commission from seller-principal where buyer defaults under valid contract of sale. 12 A.L.R.4th 1083.

Real-estate brokers: statute or regulation forbidding use of prizes, gifts, or premiums as inducement to secure customers. 62 A.L.R.4th 1044.

Am Jur. 12 Am. Jur. 2d, Brokers §§ 1, 3, 5 et seq.

4 Am. Jur. Proof of Facts 2d 225, Procurement of Purchaser of Real Estate.

CJS. 12 C.J.S., Brokers §§ 38, 39, 41-67.

Practice References. Broker Disclosures (LexisNexis).

Real Estate Brokerage Law and Practice (Matthew Bender).

§ 73-35-3. Definitions; applicability of chapter.

(1) The term "real estate broker" within the meaning of this chapter shall include all persons, partnerships, associations and corporations, foreign and domestic, who for a fee, commission or other valuable consideration, or who with the intention or expectation of receiving or collecting the same, list, sell, purchase, exchange, rent, lease, manage or auction any real estate, or the improvements thereon, including options; or who negotiate or attempt to negotiate any such activity; or who advertise or hold themselves out as engaged in such activities; or who direct or assist in the procuring of a purchaser or prospect calculated or intended to result in a real estate transaction. The term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary or upon fee, commission or otherwise, to sell such real estate, or parts thereof, in lots or other parcels, including timesharing and condominiums, and who shall sell, exchange or lease, or offer or attempt or agree to negotiate the sale, exchange or lease of, any such lot or parcel of real estate.

(2) The term "real estate" as used in this chapter shall include leaseholds as well as any and every interest or estate in land, including timesharing and condominiums, whether corporeal or incorporeal, freehold or nonfreehold, and whether said property is situated in this state or elsewhere; provided, however, that the term "real estate" as used in this chapter shall not include oil, gas or mineral leases, nor shall it include any other mineral leasehold, mineral estate or mineral interest of any nature whatsoever.

(3) One (1) act in consideration of or with the expectation or intention of, or upon the promise of, receiving compensation, by fee, commission or otherwise, in the performance of any act or activity contained in subsection (1) of this section, shall constitute such person, partnership, association or corporation a real estate broker and make him, them or it subject to the provisions and requirements of this chapter.

(4) The term "real estate salesperson" shall mean and include any person employed or engaged by or on behalf of a licensed real estate broker to do or deal in any activity as included or comprehended by the definitions of a real estate broker in subsection (1) of this section, for compensation or otherwise.

(5) The term "automated valuation method" means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.

(6) The term "broker price opinion" means an estimate prepared by a real estate broker, agent, or salesperson that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model.

(7) Exempt from the licensing requirements of this chapter shall be any person, partnership, association or corporation, who, as a bona fide owner,

shall perform any aforesaid act with reference to property owned by them, or to the regular employees thereof who are on a stated salary, where such acts are performed in the regular course of business.

(8) The provisions of this chapter shall not apply to:

(a) Attorneys at law in the performance of primary or incidental duties as such attorneys at law.

(b) Any person holding in good faith a duly executed power of attorney from the owner, authorizing the final consummation and execution for the sale, purchase, leasing or exchange of real estate.

(c) The acts of any person while acting as a receiver, trustee, administrator, executor, guardian or under court order, or while acting under authority of a deed of trust or will.

(d) Public officers while performing their duties as such.

(e) Anyone dealing exclusively in oil and gas leases and mineral rights.

(9) Nothing in this chapter shall be construed to prohibit life insurance companies and their representatives from negotiating or attempting to negotiate loans secured by mortgages on real estate, nor shall these companies or their representatives be required to qualify as real estate brokers or agents under this chapter.

(10) The provisions of this chapter shall not apply to the activities of mortgagees approved by the Federal Housing Administration or the United States Department of Veterans Affairs, banks chartered under the laws of the State of Mississippi or the United States, savings and loan associations chartered under the laws of the State of Mississippi or the United States, licensees under the Small Loan Regulatory Law, being Sections 75-67-101 through 75-67-135, and under the Small Loan Privilege Tax Law, being Sections 75-67-201 through 75-67-243, small business investment companies licensed by the Small Business Administration and chartered under the laws of the State of Mississippi, or any of their affiliates and subsidiaries, related to the making of a loan secured by a lien on real estate or to the disposing of real estate acquired by foreclosure or in lieu of foreclosure or otherwise held as security. No director, officer or employee of any such financial institution shall be required to qualify as a real estate broker or agent under this chapter when engaged in the aforesaid activities for and on behalf of such financial institution.

SOURCES: Codes, 1942, § 8920-02; Laws, 1954, ch. 318, § 2; Laws, 1976, ch. 408; reenacted and amended, Laws, 1980, ch. 499, § 2; Laws, 1983, ch. 476, § 3; Laws, 1985, ch. 304; Laws, 1988, ch. 477, § 2; Laws, 1991, ch. 355, § 1; Laws, 1992, ch. 533, § 1; Laws, 1994, ch. 520, § 1; Laws, 2002, ch. 512, § 1; Laws, 2011, ch. 464, § 2, eff from and after July 1, 2011.

Cross References — Definitions pertaining particularly to Interest on Real Estate Brokers' Escrow Accounts Act, see § 73-35-103.

JUDICIAL DECISIONS

1. In general.
2. Exempt persons.
3. Jurisdiction.

1. In general.

Georgia realty company was not entitled to a commission on a real estate deal in Mississippi that was never consummated because the company, through its agent, acted as a broker in Mississippi without first being duly licensed in the state. Therefore, it could not maintain an action in any court of the state for the recovery of a commission, fee, or compensation. Transnational Ventures, Inc. v. Derr Plantation, 187 So. 3d 185 (Miss. Ct. App. 2016).

In a case in which a district court found that a real estate company attempted to negotiate the listing of a factory outlet center in contravention of Miss. Code Ann. § 73-35-33 and the real estate company, in its motion for reconsideration of the district court's order granting in part and denying in part the center's motion to dismiss, argued that the district court's ruling was too broad and that the district court ignored the central holding of the Ladner decision, in its order, the court extensively discussed the Ladner decision, and the real estate company failed to put forth any explanation as to why the court's interpretation was clearly erroneous, other than saying the ruling was too broad. The real estate company committed the one act in Mississippi qualifying them as a real estate broker; therefore, it was subject to the Mississippi Real Estate Brokers License Law, which precluded recovery of a commission for brokerage activities and actions taken without a Mississippi license. Prism Mktg. Co., Inc. v. Casino Factory Shoppes, LLC, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 106962 (N.D. Miss. Nov. 16, 2009).

Appellee negotiated for an option to purchase real property; he asked a friend to purchase the land and split the profits with him when the land was resold. Appellee did not act as a real estate broker within the meaning of Miss. Code Ann. § 73-35-3(1); he neither requested nor received a fee for negotiating the options. Davis v. Paepke, 3 So. 3d 131 (Miss. Ct. App. 2009).

Real estate broker was subject to discipline by State Real Estate Commission, after having made alleged misrepresentations as to condition of house, even though broker was also vendor. Mississippi Real Estate Comm'n v. Hennessee, 672 So. 2d 1209 (Miss. 1996).

The defendant was properly convicted of acting as a real estate broker without a license where the evidence established that he had held himself out to the owners of a motor inn as a possible middle man for foreign investors who were interested in purchasing the inn and where he had obtained a non-exclusive listing to sell the establishment; the fact that the defendant could have purchased the hotel on his own as a principal was immaterial and not inconsistent with his also having obtained a listing from the owners to sell the hotel to others. Mitchell v. State, 402 So. 2d 329 (Miss. 1981).

2. Exempt persons.

Chancery court rightly dismissed a finder's equitable claim for a "finder's fee" because he was not licensed as a real estate broker, the actions he claimed justified his compensation fell squarely within the statutory definition of a "real estate broker" and he did not allege to be a member or salaried employee of the seller, a bona fide owner of the property sold, or any person otherwise exempted. Mosley v. Triangle Townhouses, LLC, 170 So. 3d 1251 (Miss. Ct. App. 2015).

3. Jurisdiction.

Mississippi Real Estate Commission had jurisdiction to suspend two real estate brokers' licenses because the affiliate broker held himself out to be a real estate broker in a transaction and the other broker, as the responsible broker, was liable. Gussio v. Miss. Real Estate Comm'n, 122 So. 3d 783 (Miss. Ct. App. 2013).

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. 2d, Brokers §§ 1, 3, 5 et seq.

4 Am. Jur. Legal Forms 2d, Brokers §§ 46:21 et seq. (conduct of brokerage business; employment of salesmen).

CJS. 12 C.J.S., Brokers §§ 1-7, 38, 39, 41-67.

Practice References. Broker Disclosures (LexisNexis).

Real Estate Brokerage Law and Practice (Matthew Bender).

§ 73-35-4. Broker's price opinion; preparation, contents and use of opinion.

(1) A person licensed under this chapter may prepare a broker's price opinion and charge and collect a fee for such opinion if:

(a) The license of that licensee is active and in good standing; and

(b) The broker's price opinion meets the requirements of subsections (3) and (4) of this section.

(2) Notwithstanding any provision to the contrary, a person licensed under this chapter may prepare a broker's price opinion for:

(a) An existing or potential seller for the purposes of listing and selling a parcel of real property;

(b) An existing or potential buyer of a parcel of real property;

(c) A third party making decisions or performing due diligence related to the potential listing, offering, sale, exchange, option, lease or acquisition price of a parcel of real property; or

(d) An existing or potential lienholder or other third party for any purpose other than as the basis to determine the value of a parcel of real property, for a mortgage loan origination, including first and second mortgages, refinances, or equity lines of credit.

(e) The provisions of this subsection do not preclude the preparation of a broker's price opinion to be used in conjunction with or in addition to an appraisal.

(3) A broker's price opinion prepared under the authority granted in this section shall be in writing and shall conform to the standards and guidelines published by a nationally recognized association of providers of broker price opinions. The Mississippi Real Estate Commission shall promulgate regulations that are consistent with, but not limited to, the standards and guidelines of a nationally recognized association of providers of broker price opinions.

(4) A broker's price opinion shall be in writing and contain the following:

(a) A statement of the intended purpose of the price opinion;

(b) A brief description of the subject property and property interest to be priced;

(c) The basis of reasoning used to reach the conclusion of the price, including the applicable market data and/or capitalization computation;

(d) Any assumptions or limiting conditions;

(e) A disclosure of any existing or contemplated interest of the broker or salesperson issuing the opinion;

(f) The effective date of the price opinion;

(g) The name and signature of the broker or salesperson issuing the price opinion;

(h) The name of the real estate brokerage firm for which the broker or salesperson is acting;

(i) The signature date;

(j) A disclaimer stating that, "This opinion is not an appraisal of the market value of the property, and may not be used in lieu of an appraisal. If an appraisal is desired, the services of a licensed or certified appraiser must be obtained. This opinion may not be used by any party as the primary basis to determine the value of a parcel of real property for a mortgage loan origination, including first and second mortgages, refinances or equity lines of credit."; and

(k) A certification that the licensee is covered by errors and omissions insurance, to the extent required by state law, for all liability associated with the preparation of the broker's price opinion.

(5) If a broker's price opinion is submitted electronically or on a form supplied by the requesting party:

(a) A signature required by paragraph (g) of subsection (4) may be an electronic signature, as defined in Section 75-12-3.

(b) A signature required by paragraph (g) of subsection (4) and the disclaimer required by paragraph (j) of subsection (4) may be transmitted in a separate attachment if the electronic format or form supplied by the requesting party does not allow additional comments to be written by the licensee. The electronic format or the form supplied by the requesting party must:

(i) Reference the existence of a separate attachment; and

(ii) Include a statement that the broker's price opinion is not complete without the attachment.

(6) Notwithstanding any provisions to the contrary, a person licensed pursuant to this chapter may not prepare a broker's price opinion for any purpose in lieu of an appraisal when an appraisal is required by federal or state statute. A broker's price opinion which estimates value or worth of a parcel of real estate rather than sales price shall be deemed to be an appraisal and may not be prepared by a licensed broker or sales agent under the authority of their licensee but may only be prepared by a duly licensed appraiser and must meet the regulations promulgated by the Mississippi Real Estate Appraiser Licensing and Certification Board. A broker's price opinion may not under any circumstances be referred to as a valuation or appraisal.

SOURCES: Laws, 2011, ch. 464, § 3, eff from and after July 1, 2011.

§ 73-35-4.1. Disclosure of information concerning size or area of property involved in real estate transaction; liability; remedy for violation of section.

(1)(a) In connection with any real estate transaction, the size or area, in square footage or otherwise, of the subject property, if provided by any real estate licensee in accordance with paragraph (b)(i) and (ii), shall not be considered any warranty or guarantee of the size or area information, in square footage or otherwise, of the subject property.

(b)(i) If a real estate licensee provides any party to a real estate transaction with third-party information concerning the size or area, in square footage or otherwise, of the subject property involved in the transaction, the licensee shall identify the source of the information.

(ii) For the purposes of this section, "third-party information" means:

1. An appraisal or any measurement information prepared by a licensed appraiser;
2. A surveyor developer's plan prepared by a licensed surveyor;
3. A tax assessor's public record; or
4. A builder's plan used to construct or market the property.

(c) A real estate licensee has no duty to the seller or purchaser of real property to conduct an independent investigation of the size or area, in square footage or otherwise, of a subject property, or to independently verify the accuracy of any third-party information.

(d) A real estate licensee who has complied with the requirements of this section, as applicable, shall have no further duties to the seller or purchaser of real property regarding disclosed or undisclosed property size or area information, and shall not be subject to liability to any party for any damages sustained with regard to any conflicting measurements or opinions of size or area, including exemplary or punitive damages.

(2)(a) If a real estate licensee has provided third-party information to any party to a real estate transaction concerning size or area of the subject real property, a party to the real estate transaction may recover damages from the licensee in a civil action only when a licensee knowingly violates the duty to disclose the source of the information as required in this section. However, nothing in this section shall provide immunity from civil liability to any licensee who knowingly misrepresents the size or area of the subject real property.

(b) The sole and exclusive civil remedy at common law or otherwise for a violation of this section by a real estate licensee shall be an action for actual damages suffered by the party as a result of such violation and shall not include exemplary or punitive damages.

(c) For any real estate transaction commenced after July 1, 2013, any civil action brought pursuant to this section shall be commenced within two (2) years after the date of transfer of the subject real property.

(d) In any civil action brought pursuant to this section, the prevailing party shall be allowed court costs and reasonable attorney fees to be set by the court and collected as costs of the action.

(e) A transfer of a possessory interest in real property subject to the provisions of this section may not be invalidated solely because of the failure of any person to comply with the provisions of this section.

(f) The provisions of this section shall apply to, regulate and determine the rights, duties, obligations and remedies, at common law or otherwise, of the seller marketing the seller's real property for sale through a real estate licensee, and of the purchaser of real property offered for sale through a real estate licensee, with respect to disclosure of third-party information concerning the subject real property's size or area, in square footage or otherwise, and this section hereby supplants and abrogates all common-law liability, rights, duties, obligations and remedies of all parties therefor.

SOURCES: Laws, 2013, ch. 500, § 1, eff from and after July 1, 2013.

§ 73-35-5. Real estate commission created; organization; seal; records.

(1) There is hereby created the Mississippi Real Estate Commission. The commission shall consist of five (5) persons, to be appointed by the Governor with the advice and consent of the Senate. Each appointee shall have been a resident and citizen of this state for at least six (6) years prior to his appointment, and his vocation for at least five (5) years shall have been that of a real estate broker. One (1) member shall be appointed for the term of one (1) year; two (2) members for terms of two (2) years; two (2) members for terms of four (4) years; thereafter, the term of the members of said commission shall be for four (4) years and until their successors are appointed and qualify. There shall be at least one (1) commissioner from each congressional district, as such districts are constituted as of July 1, 2002. The commissioners appointed from each of the congressional districts shall be bona fide residents of the district from which each is appointed. One (1) additional commissioner shall be appointed without regard to residence in any particular congressional district. Members to fill vacancies shall be appointed by the Governor for the unexpired term. The Governor may remove any commissioner for cause. The State of Mississippi shall not be required to furnish office space for such commissioners. The provisions of this section shall not affect persons who are members of the Real Estate Commission as of January 1, 2002. Such members shall serve out their respective terms, upon the expiration of which the provisions of this section shall take effect. Nothing provided herein shall be construed as prohibiting the reappointment of any member of the said commission.

(2) The commission shall organize by selecting from its members a chairman, and may do all things necessary and convenient for carrying into effect the provisions of this chapter, and may from time to time promulgate rules and regulations. Each member of the commission shall receive per diem as authorized in Section 25-3-69, Mississippi Code of 1972, and his actual and necessary expenses incurred in the performance of duties pertaining to his office as authorized in Section 25-3-41, Mississippi Code of 1972.

(3) The commission shall adopt a seal by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of said commission, shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the commission under authority of this chapter shall be open to public inspection except pending investigative files.

SOURCES: Codes, 1942, § 8920-03; Laws, 1954, ch. 318, § 3; Laws, 1955, Ex. Sess. ch. 94, § 1; Laws, 1974, ch. 485, § 1; reenacted and amended, Laws, 1980, ch. 499, § 3; Laws, 1988, ch. 477, § 3; Laws, 1991, ch. 355, § 2; Laws, 2002, ch. 512, § 2, eff from and after July 1, 2002.

Cross References — General powers and duties of governor, see § 7-1-5.

Mississippi Real Estate Appraiser Licensing and Certification Board as adjunct board to the Commission, see § 73-34-7.

Administration and enforcement of home inspector licensing regulations by Mississippi Real Estate Commission, see §§ 73-60-1 et seq.

JUDICIAL DECISIONS

1. In general.

Mississippi Real Estate Commission, as well as commissioners and staff, acting within its scope of authority is immune from suit brought under Sherman Act and Clayton Act; commissioners and staff may utilize protection of qualified governmental immunity for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. Pope v. Mississippi Real Estate Comm'n, 695 F. Supp. 253 (N.D. Miss. 1988), aff'd, 872 F.2d 127 (5th Cir. 1989).

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. 2d, Brokers § 14.
CJS. 12 C.J.S., Brokers §§ 13-17.

§ 73-35-6. Licenses for business entities.

A corporation, partnership, company or association shall be granted a license when individual broker's licenses have been issued to every member, owner, partner or officer of such partnership, company, association or corporation who actively participates in its brokerage business and when any required fee is paid.

SOURCES: Laws, 2002, ch. 512, § 3, eff from and after July 1, 2002.

Cross References — Qualifications for licensure, see § 73-35-7.

§ 73-35-7. Qualifications for license.

Licenses shall be granted only to persons who present, and to corporations, partnerships, companies or associations whose officers, associates or partners present satisfactory proof to the commission that they are trustworthy and competent to transact the business of a real estate broker or real estate salesperson in such manner as to safeguard the interests of the public. Every person who applies for a resident license as a real estate broker: (a) shall be age twenty-one (21) years or over, and have his legal domicile in the State of Mississippi at the time he applies; (b) shall be subject to the jurisdiction of this state, subject to the income tax laws and other excise laws thereof, subject to the road and bridge privilege tax laws thereof; (c) shall not be an elector in any other state; (d) shall have held a license as an active real estate salesperson for twelve (12) months immediately prior to making application for the broker's examination hereafter specified; (e) shall have successfully completed a minimum of one hundred twenty (120) hours of courses in real estate as hereafter specified; (f) shall have successfully completed the real estate broker's examination as hereafter specified; and (g) shall have successfully been cleared for licensure by the commission's background investigation as provided in Section 73-35-10.

An applicant who has not held an active real estate salesperson's license for a period of at least twelve (12) months immediately prior to submitting an application shall have successfully completed a minimum of one hundred fifty (150) classroom hours in real estate courses, which courses are acceptable for credit toward a degree at a college or university as approved by the Southern Association of Colleges and Schools.

Every applicant for a resident license as a real estate salesperson shall be age eighteen (18) years or over, shall be a bona fide resident of the State of Mississippi prior to filing his application, shall have successfully completed a minimum of sixty (60) hours in courses in real estate as hereafter specified, and shall have successfully completed the real estate salesperson's examination as hereafter specified.

The residency requirements set forth in this section shall not apply to those licensees of other states who qualify and obtain nonresident licenses in this state.

The commission is authorized to exempt from such prelicensing educational requirements, in whole or in part, a real estate licensee of another state who desires to obtain a license under this chapter, provided that the prelicensing educational requirements in the other state are determined by the commission to be equivalent to prelicensing educational requirements in this state and provided that such state extends this same privilege or exemption to Mississippi real estate licensees. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Codes, 1942, § 8920-04; Laws, 1954, ch. 318, § 4; Laws, 1960, ch. 395, § 1; Laws, 1974, ch. 485, § 2; Laws, 1976, ch. 445, § 1; reenacted and amended, Laws, 1980, ch. 499, § 4; Laws, 1983, ch. 476, § 1; Laws, 1988, ch. 477, § 4; Laws, 1991, ch. 355, § 3; Laws, 1992, ch. 533, § 2; Laws, 1994, ch. 520, § 2; Laws, 2002, ch. 512, § 4; Laws, 2013, ch. 350, § 33; Laws, 2016, ch. 472, § 2, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment added (g) in the first paragraph and made related changes; and made minor stylistic changes in the third paragraph.

Cross References — Authority of a board of supervisors of a county to enter into contracts for professional services with appraisers licensed by the Mississippi Real Estate Commission or as provided in this section, see § 19-3-69.

Nonresident's license, see § 73-35-8.

Written examination required, see § 73-35-13.

Content of education courses required for licensure, see § 73-35-14.3.

Distance learning courses, see § 73-35-14.4.

Post-license education, see § 73-35-14.5.

Fees, see § 73-35-17.

ATTORNEY GENERAL OPINIONS

Exemption granted by Legislature would not cease to exist once individual has obtained real estate salesperson's license, and exemption could not be terminated by any action of administrative agency such as Mississippi Real Estate Commission. Neelley, March 27, 1990, A.G. Op. #90-0182.

The National Association of Realtors accreditation process will meet the requirements of the statute so that real estate salespersons and real estate brokers can continue to be licensed by the Mississippi Real Estate Commission. Neelley, April 3, 1998, A.G. Op. #98-0170.

RESEARCH REFERENCES

ALR. Right of attorney, as such, to act or become licensed to act as real-estate broker. 23 A.L.R.4th 230.

Am Jur. 12 Am. Jur. 2d, Brokers §§ 10-12 et seq.

5 Am. Jur. Pl & Pr Forms (Rev), Brokers, Forms 1 et seq. (licensing and regulation).

CJS. 12 C.J.S., Brokers §§ 38, 39, 41-67.

§ 73-35-8. Nonresident's license; application.

(1) A nonresident may apply for a nonresident's license in Mississippi provided the individual is (a) a licensed broker in another state, or (b) is a broker/salesperson or salesperson affiliated with a resident or nonresident Mississippi broker, or (c) is a nonresident who applies for a broker's license and who will maintain an office in Mississippi. The nonresident broker need not maintain a place of business within Mississippi provided he is regularly actively engaged in the real estate business and maintains a place of business in the other state. The nonresident licensee or applicant shall be subject to all the provisions of this chapter, except for the residency requirement and approved equivalent prelicensing education.

(2) Every nonresident applicant shall file a statement of irrevocable consent with the Real Estate Commission that legal actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise or in which the plaintiff may reside by service of process or pleading authorized by the laws of this state, by the Secretary of State of Mississippi, or by any member of the commission or chief executive officer thereof, the consent stipulating that the service of process or pleading shall be taken in all courts to be valid and binding as if personal service had been made upon the nonresident licensee in this state. The consent shall be duly acknowledged. Every nonresident licensee shall consent to have any

hearings conducted by the commission pursuant to Section 73-35-23, Mississippi Code of 1972, at a place designated by the commission.

(3) Any service of process or pleading shall be served on the executive officer of the commission by filing duplicate copies, one (1) of which shall be filed in the office of the commission and the other forwarded by certified mail to the last-known principal address of the nonresident licensee against whom such process or pleading is directed. No default in any such action shall be taken except upon an affidavit of certification of the commission or the executive officer thereof that a copy of the process or pleading was mailed to the defendant as herein provided, and no default judgment shall be taken in any such action or proceeding until thirty (30) days after the mailing of process or pleading to the defendant.

(4) An applicant shall sign an agreement to cooperate with any investigation of the applicant's real estate brokerage activities which the commission may undertake.

(5) Each applicant for a nonresident license must qualify in all respects, including education, background investigation, examination and fees, as an applicant who is a resident of Mississippi with the exception of the residency requirement and approved equivalent prelicensing education.

(6) A certification from the Executive Officer of the Real Estate Commission in the state in which the nonresident maintains his principal place of business shall be required. An applicant shall disclose all states in which he has held a real estate license and furnish a certification of licensure from that state or states.

(7) The applicant/broker shall obtain an appropriate Mississippi license for the firm through which he intends to operate as a broker.

(8) Any nonresident broker, broker-salesperson and salesperson shall meet Mississippi continuing education requirements after becoming licensed just as any resident licensee.

(9) A broker or salesperson licensed in this state, on inactive status in good standing and no longer a resident of this state, may, after meeting other requirements for nonresident licensees, make application for a nonresident license without being required to meet current prelicensing educational requirements at the time of application or having to sit for the examination in order to obtain the equivalent nonresident license.

(10) A nonresident licensee in good standing who changes his legal domicile to the State of Mississippi may obtain a resident license equivalent to his nonresident license without meeting the current educational requirements or sitting for the examination, provided other requirements set forth for residents of the state are met.

(11) A nonresident licensee may utilize the inactive status for his license under the same requirements as a resident licensee, including, but not limited to, continuing education requirements and ceasing active status under a licensed nonresident broker.

SOURCES: Laws, 1991, ch. 355, § 4; Laws, 1994, ch. 520, § 3; Laws, 2002, ch. 512, § 5; Laws, 2016, ch. 472, § 3, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment redesignated (1)(i), (ii) and (iii) as (1)(a), (b) and (c), respectively; inserted "background investigation" in (5); and made minor stylistic changes in (1), (3) and (11).

Cross References — Written examination required, see § 73-35-13.

Content of education courses required for licensure, see § 73-35-14.3.

Post-license education requirement for nonresident license, see § 73-35-14.5.

Fees, see § 73-35-17.

Background investigation required of all applicants for real estate broker's or real estate salesperson's license or nonresident license, see § 73-35-10.

Comparable Laws from other States — Arkansas: A.C.A. § 17-42-305.

Florida: Fla. Stat. § 475.180.

Georgia: O.C.G.A. § 43-40-9.

Louisiana: La. R.S. § 37:1437.

North Carolina: N.C. Gen. Stat. § 93A-10.

Tennessee: Tenn. Code Ann. § 62-13-314.

Virginia: Va. Code Ann. § 54.1-2111.

§ 73-35-9. Application for license.

(1) Every applicant for a real estate broker's license shall apply therefor in writing upon blanks prepared by the commission and shall provide such data and information as the commission may require.

(2) Such application shall be accompanied by the recommendation of at least three (3) citizens who have been property owners for at least three (3) years, who have known the applicant for three (3) years, and who are not related to the applicant, certifying that the applicant bears a good reputation for honesty and trustworthiness and recommending that a license be granted to the applicant.

(3) Every applicant for a salesperson's license shall apply therefor in writing upon blanks prepared by the commission and shall provide such data and information as the commission may require.

(4) Each application for license shall also be accompanied by two (2) photographs of the applicant in such form as the commission may prescribe.

(5) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 8920-05; Laws, 1954, ch. 318, § 5; reenacted, Laws, 1980, ch. 499, § 5; Laws, 1988, ch. 477, § 5; Laws, 1997, ch. 588, § 59; Laws, 2008, ch. 399, § 1, eff from and after passage (approved Mar. 31, 2008.)

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Application for nonresident's license, see § 73-35-8.

Fees, see § 73-35-17.

Obtaining license by false or fraudulent representation as grounds for refusing to issue or suspending or revoking license, see § 73-35-21.

RESEARCH REFERENCES

ALR. Validity of statute or ordinance requiring real-estate brokers to procure license. 39 A.L.R.2d 606.

Validity and construction of license tax or fee, or business privilege or occupational tax, on persons renting or leasing out real estate. 93 A.L.R.2d 1136.

Am Jur. 12 Am. Jur. 2d, Brokers § 49.

CJS. 12 C.J.S., Brokers §§ 38, 39, 41-67.

§ 73-35-10. Background investigation required of applicants for real estate broker's, real estate salesperson's, or nonresident's license.

(1)(a) To qualify for a Mississippi real estate broker's license or a Mississippi resident license as a real estate salesperson, or a nonresident's license in Mississippi, an applicant must have successfully been cleared for licensure through an investigation that shall consist of a determination that the applicant does not possess a background which calls into question public trust, as set forth below in subsection (2), and verification that the prospective licensee is not guilty of or in violation of any statutory ground for denial of licensure as set forth in Section 73-35-21.

(b) To assist the commission in conducting its licensure investigation, from and after July 1, 2016, all applicants for a Mississippi real estate broker's license, or a Mississippi resident license as a real estate salesperson, or a nonresident's license in Mississippi, and all applicants for renewal of any real estate license shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the commission, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose.

(c) Any and all state or national criminal history records information obtained by the commission that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the commission, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the commission to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the commission to any other person or agency.

(d) The commission shall provide to the department the fingerprints of the applicant, any additional information that may be required by the department, and a form signed by the applicant consenting to the check of the criminal records and to the use of the fingerprints and other identifying information required by the state or national repositories.

(e) The commission shall charge and collect from the applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the commission in requesting and obtaining state and national criminal history records information on the applicant.

(2)(a) The commission must ensure that applicants for real estate licenses do not possess a background that could call into question public trust. An applicant found by the commission to possess a background which calls into question the applicant's ability to maintain public trust shall not be issued a real estate license.

(b) The commission shall not issue a real estate license if:

(i) The applicant has had a real estate license revoked in any governmental jurisdiction within the five-year period immediately preceding the date of the application;

(ii) The applicant has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic or foreign court:

1. During the five-year period immediately preceding the date of the application for licensing; or

2. At any time preceding the date of the application, if such felony involved an act of fraud, dishonesty or a breach of trust, or money laundering.

(c) The commission shall adopt rules and regulations necessary to implement, administer and enforce the provisions of this section.

(d) The requirement of a criminal background check provided in this section shall not apply to persons who have held a broker's or salesperson's license in this state for at least twenty-five (25) years and who are older than seventy (70) years of age.

SOURCES: Laws, 2016, ch. 472, § 1, eff from and after July 1, 2016.

§ 73-35-11. Nonresident may not act except in cooperation with licensed broker of state.

It shall be unlawful for any licensed broker, salesperson or other person who is not licensed as a Mississippi resident or nonresident broker or salesperson and a licensed broker or licensed salesperson in this state to perform any of the acts regulated by this chapter, except that a licensed broker of another state who does not hold a Mississippi real estate license may cooperate with a licensed broker of this state provided that any commission or fee resulting from such cooperative negotiation shall be stated on a form filed with the commission reflecting the compensation to be paid to the Mississippi broker.

Whenever a Mississippi broker enters into a cooperative agreement under this section, the Mississippi broker shall file within ten (10) days with the commission a copy of each such written agreement. By signing the agreement, the nonresident broker who is not licensed in this state agrees to abide by

Mississippi law, and the rules and regulations of the commission; and further agrees that civil actions may be commenced against him in any court of competent jurisdiction in any county of this state in which a claim may arise.

The Mississippi broker shall require a listing or joint listing of the property involved. The written cooperative agreements shall specify all material terms of each agreement, including but not limited to its financial terms.

The showing of property located in Mississippi and negotiations pertaining thereto shall be supervised by the Mississippi broker. In all advertising of real estate located in Mississippi, the name and telephone number of the Mississippi broker shall appear and shall be given equal prominence with the name of the nonresident broker who is not licensed in this state.

The Mississippi broker shall be liable for all acts of the above cooperating broker, as well as for his own acts, arising from the execution of any cooperative agreement.

The Mississippi broker shall determine that the cooperating broker is licensed as a broker in another state.

All earnest money pertaining to a cooperative agreement must be held in escrow by the Mississippi broker unless both the buyer and seller agree in writing to relieve the Mississippi broker of this responsibility.

SOURCES: Codes, 1942, § 8920-06.5; Laws, 1960, ch. 117, § 6; Laws, 1979, ch. 493, § 1; reenacted, Laws, 1980, ch. 499, § 6; Laws, 1988, ch. 477, § 6; Laws, 1991, ch. 355, § 5; Laws, 1992, ch. 533, § 3, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. 2d, Brokers § 25. 36 Am. Jur. Trials 1, Broker-Dealer Fraud: Churning.

CJS. 12 C.J.S., Brokers §§ 38, 39, 41-67.

§ 73-35-13. Written examination requirement; exemption for licensee of another state; reciprocity.

(1) In addition to proof of his honesty, trustworthiness and good reputation, the applicant shall take a written examination which shall be held at least four (4) times each year at regular intervals and on stated times by the commission and shall test reading, writing, spelling, elementary arithmetic and his general knowledge of the statutes of this state relating to real property, deeds, mortgages, agreements of sale, agency, contract, leases, ethics, appraisals, the provisions of this chapter and such other matters the commission certifies as necessary to the practice of real estate brokerage in the State of Mississippi. The examination for a broker's license shall differ from the examination for a salesperson's license, in that it shall be of a more exacting nature and require higher standards of knowledge of real estate. The commission shall cause examinations to be conducted at such times and places as it shall determine.

(2) In event the license of any real estate broker or salesperson is revoked by the commission subsequent to the enactment of this chapter, no new license

shall be issued to such person unless he complies with the provisions of this chapter.

(3) No person shall be permitted or authorized to act as a real estate broker or salesperson until he has qualified by examination, except as hereinbefore provided. Any individual who fails to pass the examination for salesperson upon two (2) occasions, shall be ineligible for a similar examination, until after the expiration of three (3) months from the time such individual last took the examination. Any individual who fails to pass the broker's examination upon two (2) occasions, shall be ineligible for a similar examination until after the expiration of six (6) months from the time such individual last took the examination, and then only upon making application as in the first instance.

(4) If the applicant is a partnership, association or corporation, the examination shall be taken on behalf of the partnership, association or corporation by the member or officer thereof who is designated in the application as the person to receive a license by virtue of the issuing of a license to such partnership, association or corporation.

(5) Upon satisfactorily passing such examination and upon complying with all other provisions of law and conditions of this chapter, a license shall thereupon be issued to the successful applicant who, upon receiving such license, is authorized to conduct the business of a real estate broker or real estate salesperson in this state.

(6) The commission is authorized to exempt from such examination, in whole or in part, a real estate licensee of another state who desires to obtain a license under this chapter, provided that the examination administered in the other state is determined by the commission to be equivalent to such examination given in this state and provided that such other state extends this same privilege or exemption to Mississippi real estate licensees. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Codes, 1942, § 8920-07; Laws, 1954, ch. 318, § 7; Laws, 1955 Ex. Sess., ch. 94, § 2; Laws, 1979, ch. 493, § 2; reenacted, Laws, 1980, ch. 499, § 7; Laws, 1988, ch. 477, § 7; Laws, 1992, ch. 533, § 4; Laws, 1994, ch. 520, § 4; Laws, 2002, ch. 512, § 6; Laws, 2013, ch. 350, § 34, eff from and after July 1, 2013.

Cross References — Written examination required, see § 73-35-13.
Fees, see § 73-35-17.
Grounds for refusing to issue or suspending or revoking license, see § 73-35-21.
Comparable Laws from other States — Alabama: Code of Ala. § 34-27-32.
North Carolina N.C. Gen. Stat. § 93A-9.
South Carolina: S.C. Code Ann. § 40-57-120.
Tennessee: Tenn. Code Ann. § 62-13-314.

ATTORNEY GENERAL OPINIONS

Based upon Section 73-35-13, the Real Estate Commission may administer the written licensing examination through the use of a computer. Maxey, April 5, 1996, A.G. Op. #96-0201.

RESEARCH REFERENCES

Am Jur. 12 Am. Jur. 2d, Brokers §§ 10-12 et seq.

5 Am. Jur. Pl & Pr Forms (Rev), Brokers, Forms 1, 4.

CJS. 12 C.J.S., Brokers §§ 38, 39, 41-67.

§ 73-35-14. Real estate schools; regulation by commission.

(1) An institution or organization desiring to conduct a school or offer a course of instruction to prepare persons to be licensed under this chapter, or to offer post-licensure courses, shall apply to the commission for accreditation, and shall submit evidence that it is prepared to carry out a prescribed minimum curriculum in real estate principles and practices as set forth in this chapter and can meet other standards established by the commission. An investigation of the school and of the institution or organization with which such school is affiliated shall be made by the commission. If, in the opinion of the commission, the requirements for an accredited school for instruction in real estate principles and practices are met, the commission shall approve the school as an accredited real estate school upon payment of the fees set forth in this chapter and such other fees as established by the commission. All schools so accredited shall register at required intervals on a form provided and pay the required registration fees specified in this chapter and such other fees as established by the commission.

(2) The commission shall have the authority to revoke, suspend or otherwise discipline the accreditation of any real estate school, prelicense education provider or post-license education provider if the commission determines that the school or education provider is not meeting or has not met the standards required for such accreditation. If the commission determines that any accredited real estate school or education provider is not maintaining the standards required by the commission, notices thereof in writing specifying the defect or defects shall be given promptly to the school or provider. If such defect or defects are not remedied in the time specified by the commission, the commission shall hold a hearing to determine the disciplinary action, if any, to be taken. Such hearing will be noticed to the school or provider, who will be allowed to attend the hearing and present to the commission its reasons why it should not be disciplined.

(3) A college or university in the State of Mississippi accredited by the Southern Association of Colleges and Schools or the comparable regional accrediting authority shall be an approved education provider for prelicense courses for both the broker's and salesperson's license by virtue of such accreditation. Such colleges and universities are not required to meet any other standards provided herein.

SOURCES: Laws, 2002, ch. 512, § 7, eff from and after July 1, 2003.

Cross References — Education requirements, see § 73-35-7.
Standards for real estate schools, see § 73-35-14.1.
Standards for instructors, see § 73-35-14.2.
Content of courses, see § 73-35-14.3.

§ 73-35-14.1. Standards for real estate schools.

(1) Minimum standards for initial and continuing accreditation as a real estate school or prelicense education provider shall include:

(a) Payment of any fees established by the commission. If the school or provider is accredited as a prelicense school or prelicense education provider, fees shall include a biennial fee of Two Thousand Five Hundred Dollars ($2,500.00).

(b) The school or prelicense education provider must maintain an annual average pass rate of at least sixty-five percent (65%) on each of the real estate broker's license examination and the real estate salesperson's license examination. The term annual average pass rate shall be as defined by the commission. If a school or prelicense education provider does not meet the minimum annual average pass rate, the commission shall allow the school or prelicense education provider a minimum of a three-month time period in which to attain the minimum annual average pass rate.

(c) Schools and prelicense education providers must use a method for instructor evaluation by students attending prelicense education classes. The commission may establish minimum standards for instructor evaluation. In the event the provider does not meet those minimum standards, the commission may revoke a provider's authority to offer prelicense education courses. Schools and prelicense education providers must provide the results of such instructor evaluations to the commission in the manner the commission directs.

(2) The commission may establish by rule such other standards for schools, prelicense education providers and post-license education providers as the commission may deem necessary.

SOURCES: Laws, 2002, ch. 512, § 8, eff from and after July 1, 2003.

Cross References — Education requirements, see § 73-35-7.
Accreditation and regulation of real estate schools, see § 73-35-14.
Standards for instructors, see § 73-35-14.2.
Content of courses, see § 73-35-14.3.

§ 73-35-14.2. Standards for instructors.

(1) Minimum standards for instructors for prelicense and post-license education courses required for licensure as a real estate broker or a real estate salesperson shall include:

(a) Licensure as a Mississippi real estate broker or real estate salesperson for the immediate past five (5) years prior to application; or

(b) Current certification as a Certified Public Accountant; or

(c) Attainment of a Juris Doctor (J.D.) or Bachelor of Laws (L.L.B.) degree from a law school whose accreditation is recognized by the Mississippi Supreme Court; or

(d) Demonstration of significant expertise in a particular real estate related subject area, as determined and approved by the commission.

(2) The commission may establish by rule such other standards for instructors of prelicense education and post-license education as the commission may deem necessary.

SOURCES: Laws, 2002, ch. 512, § 9, eff from and after July 1, 2003.

§ 73-35-14.3. Course content.

(1) Minimum standards for the content for education courses required for licensure as a real estate broker or a real estate salesperson shall include content on:

(a) The provisions of this chapter and any rules and regulations promulgated hereunder;

(b) Listing property;

(c) Property valuation/appraisal;

(d) Real estate arithmetic;

(e) Characteristics of real property;

(f) Agency and nonagency relationships;

(g) Real estate sale contracts/agreements of sale;

(h) Leasing and property management;

(i) Transfer of title/ownership/deeds;

(j) Settlement procedures;

(k) Financing;

(*l*) Professional responsibilities and ethics;

(m) Fair housing;

(n) Federal laws affecting real estate.

(2) A prelicense course must meet any standards that the Association of Real Estate Licensing Law Officials (ARELLO), or its successor(s), may have for prelicense courses, including, without limitation, standards for content, form, examination, facilities and instructors. If ARELLO or its successor(s) operate a certification program for prelicense courses, a prelicense course must be certified by ARELLO or its successor(s) before the commission may approve the course.

(3) The commission may establish by rule such other standards for prelicense education course content as the commission may deem necessary.

(4) No more than eight (8) prelicense hours may be earned in a single day.

(5) Courses covering the general content of subsection (1) of this section that are acceptable for credit toward a degree at a college or university as approved by the Southern Association of Colleges and Schools or the comparable regional accrediting authority shall qualify for the minimum standards for prelicense education by virtue of said accreditation. A semester-hour credit

shall be equal to fifteen (15) classroom hours and a quarter-hour credit shall be equal to ten (10) classroom hours. Courses given under this section by such accredited institutions are not required to meet ARELLO standards or certifications. The commission may establish by rule that specific areas of the general content areas listed in subsection (1) of this section are not required to be met by courses offered by the accredited institutions under this subsection.

SOURCES: Laws, 2002, ch. 512, § 10, eff from and after July 1, 2003.

Cross References — Education requirements, see § 73-35-7.
Standards for real estate schools, see § 73-35-14.1.
Standards for instructors, see § 73-35-14.2.
Distance learning courses, see § 73-35-14.4.
Post-license education, see § 73-35-14.5.
Continuing education requirements, see § 73-35-18.

§ 73-35-14.4. Distance learning courses.

(1) The term "distance learning course(s)" shall mean any course approved by the commission in which the student is not physically present in a classroom with the instructor, including, without limitation, correspondence courses, video/DVD based courses and online electronic courses.

(2) The commission may approve distance learning courses for prelicense education, post-license education and continuing education courses. Any distance learning course must meet any standards that the Association of Real Estate Licensing Law Officials (ARELLO), or its successor(s), may have for such courses, including, without limitation, standards for content, form, examination, facilities and instructors. If no ARELLO standards exist for a distance learning course, the commission shall establish by rule such minimum standards. If ARELLO or its successor(s) operate a certification program for distance learning courses, a distance learning course must be certified by ARELLO or its successor(s) before the commission may approve the course.

SOURCES: Laws, 2002, ch. 512, § 11, eff from and after July 1, 2002.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (1). The words "The term 'distance learning courses(s)' " were changed to "The term 'distance learning course(s)'. " The Joint Committee ratified the correction at its June 3, 2003 meeting, and the section has been reprinted in the supplement to reflect the corrected language.

Cross References — Education requirements, see § 73-35-7.
Standards for real estate schools, see § 73-35-14.1.
Standards for instructors, see § 73-35-14.2.
Content of causes, see § 73-35-14.3.
Post-license education, see § 73-35-14.5.
Continuing education requirements, see § 73-35-18.

§ 73-35-14.5. Temporary licenses; post-license education.

(1) Upon passing the Mississippi broker's or salesperson's examination and complying with all other conditions for licensure, a temporary license shall be issued to the applicant. The fee for the temporary license shall also be the same for the permanent license as provided in Section 73-35-17. A temporary license shall be valid for a period of one (1) year following the first day of the month after its issuance.

(2) All Mississippi residents who apply for and receive a nonresident Mississippi broker's or salesperson's license shall be subject to the requirements under this section, including temporary licensure and completion of a thirty-hour post-license course.

(3) The holder of a temporary license shall not be issued a permanent license until he has satisfactorily completed a thirty-hour post-license course prescribed by the commission and offered by providers specifically certified by the commission to offer this mandated post-license education. The holder of a temporary license shall complete the entire thirty-hour course within twelve (12) months of issuance of his temporary license; otherwise this temporary license shall automatically be placed on inactive status by the Mississippi Real Estate Commission. If the holder of the temporary license does not complete the course and have his permanent license issued within one (1) year following the first day of the month after its issuance, the temporary license shall automatically expire and lapse. A temporary license is not subject to renewal procedures in this chapter and may not be renewed.

(4) The thirty-hour post-license course shall be offered by providers certified and approved by the commission, and an annual certification fee of One Thousand Dollars ($1,000.00) shall be charged to providers. The thirty-hour post-license coursework shall be offered in no less than fifteen-hour increments of classroom instruction. No more than eight (8) hours may be earned in a single day. The commission shall determine standards for approval of post-license courses and course providers, and shall require certification of such coursework of the applicant. There shall be different content criteria for post-license education for salesperson licensees and for broker licensees. In the post-license course for salesperson licensees, a minimum of twenty-four (24) hours of the thirty-hour coursework shall be in the following subjects: agency relationships, contracts, earnest money, antitrust, fair housing, ethics and property condition disclosure. The remaining six (6) hours shall be in subjects intended to enhance the competency of salesperson licensees in representing consumers, and may include the following subjects: pricing property, environmental issues, home inspections, leases and property management, and mortgage processes. In the post-license course for broker licensees, a minimum of twenty-four (24) hours of the thirty-hour coursework shall be in the following subjects: managing escrow accounts, intraoffice confidentiality, broker responsibilities to licensees, office policies and procedures (including agency office policies), broker agreements with licensees and assistants and Mississippi Real Estate Commission required forms and any other subject as

the commission may, by rule, require to be included in such course. The remaining six (6) hours shall be in subjects intended to enhance the competency of brokers, including, without limitation, managing agents, recruiting, retention, budgeting and financial planning.

(5) The holder of an active license who has satisfactorily completed the post-license course and whose permanent license has been issued shall not be subject to the sixteen-hour continuing education requirement in this chapter for the first renewal of his permanent license.

SOURCES: Laws, 2002, ch. 512, § 12, eff from and after July 1, 2002.

Cross References — Education requirements, see § 73-35-7.
Standards for real estate schools, see § 73-35-14.1.
Standards for instructors, see § 73-35-14.2.
Course content, see § 73-35-14.3.
Distance learning courses, see § 73-35-14.4.
Fees, see § 73-35-17.
Continuing education requirements, see § 73-35-18.
Grounds for refusing to issue or suspending or revoking license, see § 73-35-21.

§ 73-35-15. Location of business and responsible broker to be designated.

(1) Every person, partnership, association or corporation licensed as a real estate broker shall be required to have and maintain a definite place of business, which shall be a room either in his home or an office elsewhere, to be used for the transaction of real estate business, or such business and any allied business. The certificate of registration as broker and the certificate of each real estate salesperson employed by such broker shall be prominently displayed in said office. The said place of business shall be designated in the license. In case of removal from the designated address, the licensee shall make application to the commission before removal, or within ten (10) days after removal, designating the new location of such office, whereupon the commission shall forthwith issue a new license for the new location for the unexpired period.

(2) All licenses issued to a real estate salesperson or broker-salesperson shall designate the responsible broker of such salesperson or broker-salesperson. Prompt notice in writing, within three (3) days, shall be given to the commission by any real estate salesperson of a change of responsible broker, and of the name of the principal broker into whose agency the salesperson is about to enter; and a new license shall thereupon be issued by the commission to such salesperson for the unexpired term of the original license upon the return to the commission of the license previously issued. The change of responsible broker or employment by any licensed real estate salesperson without notice to the commission as required shall automatically cancel his license. Upon termination of a salesperson's agency, the responsible broker shall within three (3) days return the salesperson's license to the commission for cancellation. It shall be unlawful for any real estate salesperson to perform

any of the acts contemplated by this chapter either directly or indirectly after his agency has been terminated and his license has been returned for cancellation until his license has been reissued by the commission.

SOURCES: Codes, 1942, § 8920-08; Laws, 1954, ch. 318, § 8; reenacted, Laws, 1980, ch. 499, § 8; Laws, 1988, ch. 477, § 8; Laws, 1991, ch. 355, § 6; Laws, 2002, ch. 512, § 13, eff from and after July 1, 2002.

Cross References — Powers of commission as to violations, see § 73-35-23.
Penalties for violations, see § 73-35-31.

§ 73-35-16. Real estate licensees required to obtain errors and omissions insurance coverage; persons required to submit proof of errors and omissions insurance; minimum requirements of group policy issued to commission; public bid for group insurance contract; requirements for independent coverage; rules and regulations.

(1) The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Aggregate limit" means a provision in an insurance contract limiting the maximum liability of an insurer for a series of losses in a given time period such as the policy term.

(b) "Claims-made" means policies written under a claims-made basis which shall cover claims made (reported or filed) during the year the policy is in force for incidents which occur that year or during any previous period the policyholder was insured under the claims-made contract. This form of coverage is in contrast to the occurrence policy which covers today's incident regardless of when a claim is filed even if it is one or more years later.

(c) "Extended reporting period" means a designated period of time after a claims-made policy has expired during which a claim may be made and coverage triggered as if the claim had been made during the policy period.

(d) "Licensee" means any active individual broker, broker-salesperson or salesperson, any partnership or any corporation.

(e) "Per-claim limit" means the maximum limit payable, per licensee, for damages arising out of the same error, omission or wrongful act.

(f) "Prior acts coverage" applies to policies on a claims-made versus occurrence basis. Prior acts coverage responds to claims that are made during a current policy period, but the act or acts causing the claim or injuries for which the claim is made occurred prior to the inception of the current policy period.

(g) "Proof of coverage" means a copy of the actual policy of insurance, a certificate of insurance or a binder of insurance.

(h) "Retroactive date" means a provision, found in many claims-made policies, that the policy shall not cover claims for injuries or damages that occurred before the retroactive date even if the claim is first made during the policy period.

(2) The following persons shall submit proof of insurance:

(a) Any active individual broker, active broker-salesperson or active salesperson;

(b) Any partnership (optional); or

(c) Any corporation (optional).

(3) Individuals whose licenses are on inactive status are not required to carry errors and omissions insurance.

(4) All Mississippi licensees shall be covered for activities contemplated under this chapter.

(5) Licensees may obtain errors and omissions coverage through the insurance carrier approved by the Mississippi Real Estate Commission and provided on a group policy basis. The following are minimum requirements of the group policy to be issued to the commission, including, as named insureds, all licensees who have paid their required premium:

(a) All activities contemplated under this chapter are included as covered activities;

(b) A per-claim limit is not less than One Hundred Thousand Dollars ($100,000.00);

(c) An annual aggregate limit is not less than One Hundred Thousand Dollars ($100,000.00);

(d) Limits apply per licensee per claim;

(e) Maximum deductible is Two Thousand Five Hundred Dollars ($2,500.00) per licensee per claim for damages;

(f) Maximum deductible is One Thousand Dollars ($1,000.00) per licensee per claim for defense costs; and

(g) The contract of insurance pays, on behalf of the injured person(s), liabilities owed.

(6)(a) The maximum contract period between the insurance carrier and the commission is to be five (5) consecutive policy terms, after which time period the commission shall place the insurance out for competitive bid. The commission shall reserve the right to place the contract out for bid at the end of any policy period.

(b) The policy period shall be a twelve-month policy term.

(c) The retroactive date for the master policy shall not be before July 1, 1994.

(i) The licensee may purchase full prior acts coverage on July 1, 1994, if the licensee can show proof of errors and omissions coverage that has been in effect since at least March 15, 1994.

(ii) If the licensee purchases full prior acts coverage on July 1, 1994, that licensee shall continue to be guaranteed full prior acts coverage if the insurance carriers are changed in the future.

(iii) If the licensee was not carrying errors and omissions insurance on July 1, 1994, the individual certificate shall be issued with a retroactive date of July 1, 1994. This date shall not be advanced if the insurance carriers are changed in the future.

(iv) For any new licensee who first obtains a license after July 1, 1994, the retroactive date shall be the effective date of licensure.

(v) For any licensee who changes status of license from inactive to active, the retroactive date shall be the effective date of change to "active" licensure.

(d) Each licensee shall be notified of the required terms and conditions of coverage for the policy at least thirty (30) days before the renewal date of the policy. A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed with the commission by the renewal date of the policy by each licensee who elects not to participate in the insurance program administered by the commission.

(e) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the insurance program at a premium of no more than Two Hundred Fifty Dollars ($250.00) per twelve (12) months' policy period, the requirement of insurance coverage under this section shall be void during the applicable contract period.

(7) Licensees may obtain errors and omissions coverage independently if the coverage contained in the policy complies with the following minimum requirements:

(a) All activities contemplated under this chapter are included as covered activities;

(b) A per-claim limit is not less than One Hundred Thousand Dollars ($100,000.00);

(c) The deductible is not more than Two Thousand Five Hundred Dollars ($2,500.00) per licensee per claim for damages and the deductible is not more than One Thousand Dollars ($1,000.00) per licensee per claim for defense costs; and

(d) If other insurance is provided as proof of errors and omissions coverage, the other insurance carrier shall agree to a noncancelable policy or to provide a letter of commitment to notify the commission thirty (30) days before the intention to cancel.

(8) The following provisions apply to individual licensees:

(a) The commission shall require receipt of proof of errors and omissions insurance from new licensees within thirty (30) days of licensure. Any licenses issued at any time other than policy renewal time shall be subject to a pro rata premium.

(b) For licensees not submitting proof of insurance necessary to continue active licensure, the commission shall be responsible for sending notice of deficiency to those licensees. Licensees who do not correct the deficiency within thirty (30) days shall have their licenses placed on inactive status. The commission shall assess fees for inactive status and for return to active status when errors and omissions insurance has been obtained.

(c) Any licensee insured in the state program whose license becomes inactive shall not be charged an additional premium if the license is reactivated during the policy period.

(9) The commission is authorized to adopt such rules and regulations as it deems appropriate to handle administrative duties relating to operation of the program, including billing and premium collection.

SOURCES: Laws, 1994, ch. 520, § 8; Laws, 2002, ch. 512, § 14; Laws, 2004, ch. 412, § 2; Laws, 2011, ch. 388, § 1, eff from and after July 1, 2011.

Cross References — Powers of commission as to violations, see § 73-35-23. Penalties for violations, see § 73-35-31.

RESEARCH REFERENCES

ALR. Real-estate agents' and brokers' professional liability insurance. 35 A.L.R.5th 83.

§ 73-35-17. Fees.

(1) A fee not to exceed One Hundred Fifty Dollars ($150.00) shall accompany an application for a real estate broker's license, and in the event that the applicant successfully passes the examination, no additional fee shall be required for the issuance of a license for a one-year period; provided, that if an applicant fails to pass the examination, he may be eligible to take the next or succeeding examination without the payment of an additional fee. In the event a contract testing service is utilized, the fee associated with administering the test shall be collected by the testing provider and the application fee for any real estate license shall be collected by the commission.

(2) For each license as a real estate broker issued to a member of a partnership, association or officer of a corporation other than the member or officer named in the license issued to such partnership, association or corporation, a fee not to exceed Seventy-five Dollars ($75.00) shall be charged.

(3) A fee not to exceed One Hundred Twenty Dollars ($120.00) shall accompany an application for a real estate salesperson's license, and in the event that the applicant successfully passes the examination, no additional fee shall be required for the issuance of a license for a one-year period; provided, that if an applicant fails to pass the examination, he may be eligible to take the next or succeeding examination without the payment of an additional fee. In the event a contract testing service is utilized, the fee associated with administering the test shall be collected by the testing provider and the application fee for any real estate license shall be collected by the commission.

(4) Except as provided in Section 33-1-39, it shall be the duty of all persons, partnerships, associations, companies or corporations licensed to practice as a real estate broker or salesperson to register with the commission annually or biennially, in the discretion of the commission, according to rules promulgated by it and to pay the proper registration fee. An application for renewal of license shall be made to the commission annually no later than December 31 of each year, or biennially on a date set by the commission. A licensee failing to pay his renewal fee after the same becomes due and after two (2) months' written notice of his delinquency mailed to him by United States certified mail addressed to his address of record with the commission shall thereby have his license automatically cancelled. Any licensee renewing in this grace period shall pay a penalty in the amount of one hundred percent (100%)

of the renewal fee. The renewal fee shall not exceed Seventy-five Dollars ($75.00) per year for real estate brokers, partnerships, associations and corporations. The renewal fee for a real estate salesperson's license shall not exceed Sixty Dollars ($60.00) per year.

(5) For each additional office or place of business, an annual fee not to exceed Fifty Dollars ($50.00) shall be charged.

(6) For each change of office or place of business, a fee not to exceed Fifty Dollars ($50.00) shall be charged.

(7) For each duplicate or transfer of salesperson's license, a fee not to exceed Fifty Dollars ($50.00) shall be charged.

(8) For each duplicate license, where the original license is lost or destroyed, and affidavit made thereof, a fee not to exceed Fifty Dollars ($50.00) shall be charged.

(9) To change status as a licensee from active to inactive status, a fee not to exceed Twenty-five Dollars ($25.00) shall be charged. To change status as a licensee from inactive to active status, a fee not to exceed Fifty Dollars ($50.00) shall be charged.

(10) For each bad check received by the commission, a fee not to exceed Twenty-five Dollars ($25.00) shall be charged.

(11) A fee not to exceed Five Dollars ($5.00) per hour of instruction may be charged to allay costs of seminars for educational purposes provided by the commission.

(12) A fee not to exceed Twenty-five Dollars ($25.00) may be charged for furnishing any person a copy of a real estate license, a notarized certificate of licensure or other official record of the commission.

(13) A fee not to exceed One Hundred Dollars ($100.00) shall be charged to review and process the application and instructional materials for each curriculum seeking acceptance as a real estate continuing education course developed to satisfy the mandatory continuing education requirements for this chapter, with the period of approval expiring after one (1) year. A fee not to exceed Fifty Dollars ($50.00) shall be charged for each renewal of a previously approved course, with the period of renewal expiring after one (1) year.

(14) Fees, up to the limits specified herein, shall be established by the Mississippi Real Estate Commission.

SOURCES: Codes, 1942, § 8920-09; Laws, 1954, ch. 318, § 9; Laws, 1955 Ex. Sess., ch. 94, § 3; Laws, 1960, ch. 395, § 2; Laws, 1976, ch. 445, § 2; reenacted, Laws, 1980, ch. 499, § 9; Laws, 1983, ch. 476, § 5, 1988, ch. 477, § 9; Laws, 1992, ch. 533, § 5; Laws, 1994, ch. 520, § 5; Laws, 1999, ch. 588, § 1; Laws, 2007, ch. 309, § 28; Laws, 2008, ch. 399, § 2, eff from and after passage (approved Mar. 31, 2008.)

Cross References — Continuing education requirements, see § 73-35-18.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 73-35-17(1) contemplates that examination fee be paid to real estate broker, thereby precluding requirement that applicants pay fee directly to third-party testing service. Neeley, Jan. 6, 1993, A.G. Op. #92-0942.

§ 73-35-18. License renewal; continuing education requirements; exemptions; rules and regulations; reinstatement of expired license.

(1) Each individual applicant for renewal of a license issued by the Mississippi Real Estate Commission shall, on or before the expiration date of his license, or at a time directed by the commission, submit proof of completion of not less than sixteen (16) clock hours of approved course work to the commission, in addition to any other requirements for renewal. The sixteen (16) clock hours' course work requirement shall apply to each two-year license renewal, and hours in excess thereof shall not be cumulated or credited for the purposes of subsequent license renewals except as provided in this subsection (1). The commission shall develop standards for approval of courses and shall require certification of such course work of the applicant. The commission may determine any required subject matter within the mandated sixteen (16) hours; provided that the required subjects shall not exceed eight (8) hours of the total sixteen (16) hours. Approved continuing education hours earned in the final three (3) months of a licensee's renewal period, if in excess of the required minimum sixteen (16) hours, may be carried over and credited to the next renewal period. However, no more than six (6) hours may be carried over in this manner. Any member of the Mississippi Legislature who has a real estate license shall be credited with eight (8) hours of credit for the attendance of each year of a legislative session. No person may receive continuing education credit for prelicense education courses taken, except as follows: a licensee whose license is on inactive status and whose continuing education credits are at least thirty (30) hours in arrears may, at the discretion of the commission, receive continuing education credit for retaking prelicense coursework, provided the entire prelicense course is retaken.

(2) This section shall apply to renewals of licenses which expire on and after July 1, 1994; however, an applicant for first renewal who has been licensed for not more than one (1) year shall not be required to comply with this section for the first renewal of the applicant's license. The provisions of this section shall not apply to persons who have held a broker's or salesperson's license in this state for at least twenty-five (25) years and who are older than seventy (70) years of age. Inactive licensees are not required to meet the real estate continuing education requirements specified in this section; however, such inactive licensees, before activating their license to active status, must cumulatively meet requirements missed during the period their license was inactive.

(3) The commission shall promulgate rules and regulations as necessary to accomplish the purposes of this section in accordance with the Mississippi Administrative Procedures Law.

(4) [Repealed]

SOURCES: Laws, 1985, ch. 314; Laws, 1988, ch. 477, § 10; Laws, 1989, ch. 357, § 1; Laws, 1992, ch. 533, § 6; Laws, 1994, ch. 520, § 6; Laws, 1999, ch. 588, § 2; Laws, 2002, ch. 512, § 15, eff from and after July 1, 2002.

Editor's Note — Subsection (4) was repealed by its own terms effective December 31, 1994.

Cross References — Requirement of license as real estate broker, see § 73-35-1.
Qualifications for license, see § 73-35-7.
Application for license, see § 73-35-9.
Renewal fees, see § 73-35-17.
Grounds for license refusal or revocation, see § 73-35-21.
Duties of commission in assisting in professional education, see § 73-35-27.
Commission's rulemaking authority, see § 73-35-35.

RESEARCH REFERENCES

ALR. Validity of statute or ordinance requiring real-estate brokers to procure license. 39 A.L.R.2d 606.

Revocation or suspension of real-estate broker's license for conduct not connected with business as broker. 22 A.L.R.4th 136.

Grounds for revocation or suspension of license of real-estate broker or salesperson. 7 A.L.R.5th 474.

Am Jur. 12 Am. Jur. 2d, Brokers §§ 10-12 et seq.

5 Am. Jur. Pl & Pr Forms (Rev), Brokers, Forms 1 et seq. (licensing and regulation).

CJS. 12 C.J.S. Brokers § 41, 43.

§ 73-35-19. Real estate license fund.

All fees charged and collected under this chapter shall be paid by the administrator at least once a week, accompanied by a detailed statement thereof, into the treasury of the state to credit of a fund to be known as the "Real Estate License Fund," which fund is hereby created. All monies which shall be paid into the State Treasury and credited to the "Real Estate License Fund" are hereby appropriated to the use of the commission in carrying out the provisions of this chapter including the payment of salaries and expenses, printing an annual directory of licensees, and for educational purposes. Maintenance of a searchable, internet-based web site shall satisfy the requirement for publication of a directory of licensees under this section.

SOURCES: Codes, 1942, § 8920-10; Laws, 1954, ch. 318, § 10; Laws, 1974, ch. 485, § 3; reenacted, Laws, 1980, ch. 499, § 10; Laws, 1999, ch. 588, § 3, eff from and after Jan. 1, 2000.

Cross References — Fees, see § 73-35-17.

§ 73-35-20. Repealed.

Repealed by Laws of 2002, ch. 512, § 18, eff from and after July 1, 2002. [Laws, 1999, ch. 588, § 5, eff from and after Jan. 1, 2000.]

Editor's Note — Former § 73-35-20 provided for a temporary real estate salesperson license.

§ 73-35-21. Grounds for refusing to issue or suspending or revoking license; hearing.

(1) The commission may, upon its own motion and shall upon the verified complaint in writing of any person, hold a hearing for the refusal of license or for the suspension or revocation of a license previously issued, or for such other action as the commission deems appropriate. The commission shall have full power to refuse a license for cause or to revoke or suspend a license where it has been obtained by false or fraudulent representation, or where the licensee in performing or attempting to perform any of the acts mentioned herein, is deemed to be guilty of:

(a) Making any substantial misrepresentation in connection with a real estate transaction;

(b) Making any false promises of a character likely to influence, persuade or induce;

(c) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) Any misleading or untruthful advertising;

(e) Acting for more than one (1) party in a transaction or receiving compensation from more than one (1) party in a transaction, or both, without the knowledge of all parties for whom he acts;

(f) Failing, within a reasonable time, to account for or to remit any monies coming into his possession which belong to others, or commingling of monies belonging to others with his own funds. Every responsible broker procuring the execution of an earnest money contract or option or other contract who shall take or receive any cash or checks shall deposit, within a reasonable period of time, the sum or sums so received in a trust or escrow account in a bank or trust company pending the consummation or termination of the transaction. "Reasonable time" in this context means by the close of business of the next banking day;

(g) Entering a guilty plea or conviction in a court of competent jurisdiction of this state, or any other state or the United States of any felony;

(h) Displaying a "for sale" or "for rent" sign on any property without the owner's consent;

(i) Failing to furnish voluntarily, at the time of signing, copies of all listings, contracts and agreements to all parties executing the same;

(j) Paying any rebate, profit or commission to any person other than a real estate broker or salesperson licensed under the provisions of this chapter;

(k) Inducing any party to a contract, sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract, where such substitution is motivated by the personal gain of the licensee;

(*l*) Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this chapter from any person, except his employer who must be a licensed real estate broker;

(m) Failing to successfully pass the commission's background investigation for licensure or renewal as provided in Section 73-35-10; or

(n) Any act or conduct, whether of the same or a different character than hereinabove specified, which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing. However, simple contact and/or communication with any mortgage broker or lender by a real estate licensee about any professional, including, but not limited to, an appraiser, home inspector, contractor, and/or attorney regarding a listing and/or a prospective or pending contract for the lease, sale and/or purchase of real estate shall not constitute conduct in violation of this section.

(2) No real estate broker shall practice law or give legal advice directly or indirectly unless said broker be a duly licensed attorney under the laws of this state. He shall not act as a public conveyancer nor give advice or opinions as to the legal effect of instruments nor give opinions concerning the validity of title to real estate; nor shall he prevent or discourage any party to a real estate transaction from employing the services of an attorney; nor shall a broker undertake to prepare documents fixing and defining the legal rights of parties to a transaction. However, when acting as a broker, he may use an earnest money contract form. A real estate broker shall not participate in attorney's fees, unless the broker is a duly licensed attorney under the laws of this state and performs legal services in addition to brokerage services.

(3) It is expressly provided that it is not the intent and purpose of the Mississippi Legislature to prevent a license from being issued to any person who is found to be of good reputation, is able to give bond, and who has lived in the State of Mississippi for the required period or is otherwise qualified under this chapter.

(4) In addition to the reasons specified in subsection (1) of this section, the commission shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

(5) Nothing in this chapter shall prevent an associate broker or salesperson from owning any lawfully constituted business organization, including, but not limited to, a corporation, limited liability company or limited liability partnership, for the purpose of receiving payments contemplated in this chapter. The business organization shall not be required to be licensed under this chapter and shall not engage in any other activity requiring a real estate license.

SOURCES: Codes, 1942, § 8920-11; Laws, 1954, ch. 318, § 11; Laws, 1974, ch. 485, § 4; reenacted, Laws, 1980, ch. 499, § 11; Laws, 1983, ch. 476, § 2; Laws, 1988, ch. 477, § 11; Laws, 1991, ch. 355, § 7; Laws, 1992, ch. 533, § 7; Laws, 1994, ch. 520, § 7; Laws, 1996, ch. 507, § 68; Laws, 2004, ch. 412, § 3; Laws, 2016, ch. 472, § 4, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment, in (1), added (m) and redesignated former (m) as (n), and added the last sentence in (n).

Cross References — Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

JUDICIAL DECISIONS

1. In general.
2. Inducement of breach of contract.
3. Misrepresentations.
4. Bad faith, incompetence, etc.
5. Accounting and remitting monies and commingling of monies.
6. Bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing.
7. Dual agency.

1. In general.

Trial court did not abuse its discretion in denying the buyers leave to amend to assert a cause of action for the alleged violation of Miss. Code Ann. § 73-35-21(1)(a) where any amendment would be futile based on the fact that the original owners and buyers never consummated their real-estate transaction by closing on the home. Fletcher v. Lyles, 999 So. 2d 1271 (Miss. 2009).

The fact that § 73-35-31 is in the same act as § 73-35-21 does not transform a proceeding under the latter into a criminal proceeding in which there is a right to a jury trial. McDerment v. Mississippi Real Estate Comm'n, 748 So. 2d 114 (Miss. 1999).

Real estate broker was subject to discipline by State Real Estate Commission, after having made alleged misrepresentations as to condition of house, even though broker was also vendor. Mississippi Real Estate Comm'n v. Hennessee, 672 So. 2d 1209 (Miss. 1996).

Substantial evidence supported State Real Estate Commission's suspension of broker, who was also vendor; broker had represented to prospective purchasers that termite inspection certificate existed, did not deliver certificate after promising to do so, and refused to allow post-closing inspection of house for termites until complaint had been made to Commission. Mississippi Real Estate Comm'n v. Hennessee, 672 So. 2d 1209 (Miss. 1996).

Section 73-35-21(1)(f) and Rules 24 and 25 of the Mississippi Real Estate Brokers License Law are applicable in the case of undeposited earnest money checks. A broker's refusal to return undeposited checks differs from a refusal to return the deposited funds only in the sense that the maker of the check might win the race to the bank and place a stop payment order, which itself would not constitute a defense on the check but would merely preclude the payor bank's paying the check so that the maker might offer extraneous defenses in an action. Mississippi Real Estate Comm'n v. White, 586 So. 2d 805 (Miss. 1991).

A real estate broker acted with reasonable promptness in returning an earnest money check upon a client's request where he waited until he was through with another transaction and mailed the check to the client the following morning; the broker was not required to interrupt another pressing matter when the client arrived several hours late for an appointment and demanded the check. Mississippi Real Estate Comm'n v. White, 586 So. 2d 805 (Miss. 1991).

A real estate broker violated § 73-35-21(1)(m) and Rule 24 of the Mississippi Real Estate Brokers License Law where a client asked for the return of an earnest money check to which she was legally entitled, and the broker did not return the check but instead held it and later deposited it in his escrow account. Mississippi Real Estate Comm'n v. White, 586 So. 2d 805 (Miss. 1991).

Mississippi Real Estate Commission has the power to revoke a real estate broker's license upon a finding, supported by substantial evidence, that the broker has failed in his or her duty to supervise his or her sales people. Harris v. Mississippi Real Estate Comm'n, 500 So. 2d 958 (Miss. 1986).

In an action regarding the revocation of a real estate broker's license, substantial evidence existed which showed violations of § 73-35-21, where several witnesses testified that the broker attempted to deceive the owners of property listed with the broker's company as to the identity of a prospective purchaser and his co-signing of a loan, where both the broker and the prospector purchaser stated that the broker "advised" such prospective purchaser which advice constituted the broker's acting as the agent of both the owners of the property and the prospective purchaser, and where the evidence also suggested that the broker himself had an interest in the purchase of the land. Smith v. Sullivan, 419 So. 2d 184 (Miss. 1982).

This section [Code 1942, § 8920-11] which governs the revocation of a broker's license does not authorize revocation or suspension of a license for violations of the Code of Ethics of the National Association of Real Estate Boards, there being no such specification in the list of grounds given for revocation as set out in the statute. Truitt v. NCR Co., 248 So. 2d 790 (Miss. 1971).

2. Inducement of breach of contract.

A real estate agent did not violate subsection (1)(k) of this section where, when she left one broker and associated herself with another broker, she sent a letter to all of her clients informing them of her move since she did not otherwise institute any communication with her clients and only transferred those who subsequently called her and requested transfers. Mississippi Real Estate Comm'n v. Anding, 732 So. 2d 192 (Miss. 1999).

3. Misrepresentations.

In a case involving the revocation of a real estate broker's license, there was substantial evidence to support the finding that the broker had violated this statute by making misrepresentations and engaging in improper dealing. A contract signed by the broker stated that he agreed to transfer title to property to a buyer after a certain amount of payments were made, but then he refused to do so; the broker's testimony was not consistent with the parties' contract. Ryan v. Miss. Real Estate Comm'n, — So. 3d —, 2017 Miss. App. LEXIS 55 (Miss. Ct. App. Jan. 31, 2017).

Suspension by the Mississippi Real Estate Commission of real estate brokers' licenses for two brokers, an affiliate broker and a responsible broker, was appropriate because the brokers engaged in prohibited conduct in connection with a real estate transaction as substantial evidence existed to show that the affiliate broker misrepresented to a buyer that a contract for the purchase of a home had been formed. Gussio v. Miss. Real Estate Comm'n, 122 So. 3d 783 (Miss. Ct. App. 2013).

Circuit court did not err in finding that a purchaser was not qualified to recover damages from a broker for alleged misrepresentations pursuant to any statutory provision within the Real Estate Brokers License Law of 1954, Miss. Code Ann. 73-35-1 through 73-53-37 because the purchaser did not qualify as a "person aggrieved" within the context of the License Law, Miss. Code Ann. ' 73-35-31(2), and, therefore, ' 73-35-31 did not provide a civil cause of action that the purchaser could utilize against the broker; there is no provision in the License Law, Miss. Code Ann. ' 73-35-21, that operates as a private cause of action that a disgruntled purchaser may bring against a real estate broker. Moore v. Bailey, 46 So. 3d 375 (Miss. Ct. App. 2010), writ of certiorari denied by 49 So. 3d 636, 2010 Miss. LEXIS 560 (Miss. 2010).

Substantial evidence supported a determination that a real estate broker violated subsection (a) of this section. McDerment v. Mississippi Real Estate Comm'n, 748 So. 2d 114 (Miss. 1999).

4. Bad faith, incompetence, etc.

A real estate agent did not violate subsection (1)(m) of this section where, when she left one broker and associated herself with another broker, she sent a letter to all of her clients informing them of her move since she did not otherwise institute any communication with her clients and only transferred those who subsequently called her and requested transfers. Mississippi Real Estate Comm'n v. Anding, 732 So. 2d 192 (Miss. 1999).

5. Accounting and remitting monies and commingling of monies.

Substantial evidence did not support the finding that a real estate broker violated subsection (1)(f) of this section where the Real Estate Commission recognized in its findings of fact that he never received any monies from the buyer. McDerment v. Mississippi Real Estate Comm'n, 748 So. 2d 114 (Miss. 1999).

6. Bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing.

Finding against three real estate agents in the buyer's complaint alleging improper conduct was appropriate pursuant to Mississippi Code Annotated section 73-35-21(1)(m) because the seller owned a house that had two years earlier been sold for $ 28,000, offered it for sale for $ 130,000, agreed to sell it for $ 126,000, placed the 20 percent down payment in the buyer's account so that she could falsely qualify for a loan, and then sold the house for less than $ 100,000. In turn, the agents participated in the seller's elaborate scheme and failed to meet their fiduciary duties and duties of good faith and fair dealing. Palmer v. Miss. Real Estate Comm'n, 14 So. 3d 67 (Miss. Ct. App. 2008).

Circuit court did not err in affirming the Mississippi Real Estate Commission's (Commission) ruling that the realtors' actions constituted improper dealing, Miss. Code Ann. § 73-35-21(1)(m), because there was substantial evidence in the record to support this finding; if one realtor had properly supervised the other, he would have known about the improper use of the Century 21 forms, and the Commission did not have to make exceptions for his failure to supervise based on extenuating circumstances. The sanctions imposed upon the realtors were proper as the Commission was given power to revoke a license where the licensee was found guilty of improper dealing. Farris v. Miss. Real Estate Comm'n, 994 So. 2d 229 (Miss. Ct. App. 2008), writ of certiorari denied by 998 So. 2d 1010, 2008 Miss. LEXIS 638 (Miss. 2008).

Evidence was sufficient to make a finding against a real estate broker of misrepresentation, bad faith, incompetency, or untrustworthiness, in violation of Miss. Code Ann. § 73-35-21(1)(a) and (m) where the Mississippi Real Estate Commission (MREC) heard evidence that an agent the broker supervised allowed sellers to sign a settlement statement falsely certifying that they had no knowledge of loans other than what was listed in the contract. The broker was responsible for the actions of the agent under the MREC regulations and the evidence at the hearing showed that the agent had been inadequately trained and improperly supervised. Miss. Real Estate Comm'n v. McCaughan, 900 So. 2d 1169 (Miss. Ct. App. 2004), writ of certiorari denied by 901 So. 2d 1273, 2005 Miss. LEXIS 289 (Miss. 2005).

Substantial evidence supported a determination that a real estate broker violated subsection (1)(a) of this section. McDerment v. Mississippi Real Estate Comm'n, 748 So. 2d 114 (Miss. 1999).

7. Dual agency.

Realtor was entitled to its real estate commission, after a home sale fell through due to the discovery of an encroachment that the sellers could not cure, and it did not waive the commission by unilaterally executing a release by repaying the earnest money to the prospective buyers and thereby breach its fiduciary duty pursuant to Miss. Code Ann. § 37-35-21 by acting contrary to the sellers' interest. A mutual release and a notice that the earnest money was being repaid was hand-delivered to the sellers, and the sellers did not object to return of the earnest money nor tell the realtor not to return the earnest money. Cavagnaro v. Coldwell Banker Alfonso Realty, Inc., 995 So. 2d 754 (Miss. Ct. App. 2008), writ of certiorari denied by 997 So. 2d 924, 2008 Miss. LEXIS 534 (Miss. 2008).

Trial court erred in granting a directed verdict to a real estate agency where it was acting as a dual agent in representing property buyers and a former property owner in a real estate transaction for the purchase of a residential home, as the agency had a heightened fiduciary responsibility to both parties and apparently violated that responsibility when its agent disclosed to the former property owner that a termite company that had inspected the home recommended that an expert inspection of the property be undertaken if further repair was warranted, but did not disclose that information to the property buyers despite the dual agency. Lane v. Oustalet, 850 So. 2d 1143 (Miss. Ct. App. 2002), affirmed in part and reversed in part by, remanded by 873 So. 2d 92, 2004 Miss. LEXIS 499 (Miss. 2004).

In an action by a realtor to recover a commission on the basis that it was the procuring cause for the sale of certain real property from a former Louisiana governor to the defendant, the evidence did not establish that the realtor attempted to act in a dual agency role where (1) the governor himself testified in his deposition that he explicitly told the realtor from the outset that he would not be responsible for any real estate fees or commissions, and the realtor himself also testified to that fact, (2) the governor later listed the property with a different realtor, and (3) certain documents presented by the defendant which stated that the realtor represented the buyer were shown to be unsigned preprinted working drafts. Sudeen v. Castleberry, 794 So. 2d 237 (Miss. Ct. App. 2001).

ATTORNEY GENERAL OPINIONS

It is mandatory that the Mississippi Real Estate Commission conduct a hearing upon the filing of a verified complaint as required by statute, and there is no legal basis for a commissioner to disqualify himself from conducting such hearing. Neelley, June 17, 1992, A.G. Op. #92-0442.

RESEARCH REFERENCES

ALR. Suspension or revocation of real-estate broker's license on ground of discrimination. 42 A.L.R.3d 1099.

Validity, construction, and effect of real-estate brokers' multiple-listing agreement. 45 A.L.R.3d 190.

Revocation or suspension of real-estate broker's license for violation of statutes or regulations prohibiting use of unlicensed personnel in carrying out duties. 68 A.L.R.3d 530.

Real estate broker's liability for misrepresentations as to income from or productivity of property. 81 A.L.R.3d 717.

Validity and application of regulation prohibiting licensed real-estate broker from negotiating sale or lease with owner known to have exclusive listing agreement with another broker. 17 A.L.R.4th 763.

Revocation or suspension of real-estate broker's license for conduct not connected with business as broker. 22 A.L.R.4th 136.

Right of attorney, as such, to act or become licensed to act as real-estate broker. 23 A.L.R.4th 230.

Real-estate broker's or agent's misrepresentation to, or failure to inform, vendor regarding value of vendor's real property. 33 A.L.R.4th 944.

Grounds for revocation or suspension of license of real-estate broker or salesperson. 7 A.L.R.5th 474.

Am Jur. 12 Am. Jur. 2d, Brokers §§ 29, 30, 37 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

5 Am. Jur. Pl & Pr Forms (Rev), Brokers, Forms 1 et seq. (licensing and regulation); Form 3.1 (complaint to enjoin suspension or revocation of license based on judgment arising from brokerage services discharged in bankruptcy); Forms 131 et seq. (duties and liabilities of brokers).

29 Am. Jur. Proof of Facts 263, Real Estate Broker's Negligence or Fraud in Not Disclosing Offer.

11 Am. Jur. Proof of Facts 2d 623, Real Estate Broker's Fraud as to Income from or Earnings of Property.

16 Am. Jur. Proof of Facts 2d 719, Real Estate Broker's Misrepresentation of Condition or Value of Realty.

CJS. 12 C.J.S., Brokers §§ 38, 39, 41-67.

§ 73-35-23. Powers of commission as to violations; hearings upon revocation; subpoena.

(1) The commission is hereby authorized and directed to take legal action against any violator of this chapter. Upon complaint initiated by the commission or filed with it, the licensee or any other person charged with a violation of this chapter shall be given fifteen (15) days' notice of the hearing upon the charges filed, together with a copy of the complaint. The applicant or licensee or other violator shall have an opportunity to be heard in person or by counsel, to offer testimony, and to examine witnesses appearing in connection with the complaint. Hearings shall be held at the offices of the Mississippi Real Estate Commission, or at the commission's sole discretion, at a place determined by the commission.

At such hearings, all witnesses shall be sworn and stenographic notes of the proceedings shall be taken and filed as a part of the record in the case. Any party to the proceedings shall be furnished with a copy of such stenographic notes upon payment to the commission of such fees as it shall prescribe, not exceeding, however, the actual cost to the commission. The commission shall render a decision on any complaint and shall immediately notify the parties to the proceedings in writing of its ruling, order or decision.

(2) In addition to the authority granted to the commission as hereinabove set forth, the commission is hereby vested with the authority to bring injunctive proceedings in any appropriate forum against any violator or violators of this chapter, and all judges or courts now having the power to grant injunctions are specifically granted the power and jurisdiction to hear and dispose of such proceedings.

(3) The commission is hereby authorized and empowered to issue subpoenas for the attendance of witnesses and the production of books and papers. The process issued by the commission shall extend to all parts of the state, and such process shall be served by any person designated by the commission for such service. The person serving such process receive such compensation as may be allowed by the commission, not to exceed the fee prescribed by law for similar services. All witnesses who are subpoenaed and who appear in any proceedings before the commission receive the same fees and mileage as allowed by law, and all such fees shall be taxed as part of the costs in the case.

(4) Where in any proceeding before the commission any witness shall fail or refuse to attend upon subpoena issued by the commission, shall refuse to testify, or shall refuse to produce any books and papers the production of which is called for by the subpoena, the attendance of such witness and the giving of his testimony and the production of the books and papers shall be enforced by

any court of competent jurisdiction of this state in the same manner as the attendance and testimony of witnesses in civil cases are enforced in the courts of this state.

(5) The commission may obtain legal counsel privately to represent it in proceedings when legal counsel is required.

SOURCES: Codes, 1942, § 8920-12; Laws, 1954, ch. 318, § 12; Laws, 1960, ch. 395, § 3; Laws, 1974, ch. 485, § 5; Laws, 1979, ch. 493, § 3; reenacted, Laws, 1980, ch. 499, § 12; Laws, 1988, ch. 477, § 12; Laws, 1992, ch. 533, § 8; Laws, 2002, ch. 512, § 16, eff from and after July 1, 2002.

Cross References — Sheriffs' fees generally, see § 25-7-19.

Witness fees generally, see § 25-7-47.

Additional powers and duties of Commission with respect to real estate appraisers, see § 73-34-9.

Appeals, see § 73-35-25.

Nonresident applying for nonresident's real estate broker's license, see § 73-35-8.

Penalties for violations, see § 73-35-31.

Injunctions to restrain illegal practice of profession, see § 73-51-1.

JUDICIAL DECISIONS

1. In general.

While under statute the Mississippi Real Estate Commission must hold a hearing when it receives a verified complaint, it may also hold a hearing on its own motion and proceed by its own complaint. Harris v. Mississippi Real Estate Comm'n, 500 So. 2d 958 (Miss. 1986).

A decision of the real estate commission, finding the defendant guilty of a false representation to plaintiffs as to the value of an outstanding mortgage against property purchased by them, could not prevail where it could not be determined from the record what charges were made against the defendant and where there was no verified complaint entered in the record nor anything whatever to indicate that process was served upon the defendant. Truitt v. NCR Co., 248 So. 2d 790 (Miss. 1971).

RESEARCH REFERENCES

ALR. Real-estate broker's right and liabilities as affected by failure to disclose agreement to loan purchase money to purchaser. 17 A.L.R.4th 788.

Am Jur. 5 Am. Jur. Pl & Pr Forms (Rev), Brokers, Forms 131 et seq. (duties and liabilities of brokers).

§ 73-35-25. Appeals.

(1) Any applicant or licensee or person aggrieved shall have the right of appeal from any adverse ruling or order or decision of the commission to the circuit court of the county of residence of the applicant, licensee or person, or of the First Judicial District of Hinds County, within thirty (30) days from the service of notice of the action of the commission upon the parties in interest.

(2) Notice of appeals shall be filed in the office of the clerk of the court who shall issue a writ of certiorari directed to the commission commanding it, within thirty (30) days after service thereof, to certify to such court its entire record in the matter in which the appeal has been taken. The appeal shall

thereupon be heard in due course by said court, without a jury, which shall review the record and make its determination of the cause between the parties.

(3) Any order, rule or decision of the commission shall not take effect until after the time for appeal to said court shall have expired. In the event an appeal is taken by a defendant, such appeal may act, in the discretion of the court, as a supersedeas and the court shall dispose of said appeal and enter its decision promptly.

(4) Any person taking an appeal shall post a satisfactory bond in the amount of Five Hundred Dollars ($500.00) for the payment of any costs which may be adjudged against him.

(5) Actions taken by the commission in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SOURCES: Codes, 1942, § 8920-13; Laws, 1954, ch. 318, § 13; Laws, 1960, ch. 395, § 4; Laws, 1979, ch. 493, § 4; reenacted, Laws, 1980, ch. 499, § 13, 1988, ch. 477, § 13; Laws, 1996, ch. 507, § 69, eff from and after July 1, 1996.

Cross References — Powers of commission as to violations, see § 73-35-23.

Penalties for violations, see § 73-35-31.

Suspension of state-issued licenses, permits or registratins for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

JUDICIAL DECISIONS

1. In general.

The real estate commission was authorized to appeal from a final judgment of the circuit court which reversed an order of the commission suspending the license of a real estate broker, where the commission was a party to the broker's appeal in the circuit court, making it an aggrieved party-appellant in the supreme court under Code 1942, § 1147. Mississippi Real Estate Comm'n v. Ryan, 241 So. 2d 667 (Miss. 1970).

RESEARCH REFERENCES

Am Jur. 5 Am. Jur. Pl & Pr Forms (Rev), Brokers, Form 3.

§ 73-35-27. Duties of commission.

(1) The commission is hereby authorized to assist in conducting or holding real estate courses or institutes, and to incur and pay the necessary expenses in connection therewith, which courses or institutes shall be open to any licensee or other interested parties.

(2) The commission is hereby authorized to assist libraries, real estate institutes, and foundations with financial aid, or otherwise, in providing texts, sponsoring studies, surveys and educational programs for the benefit of real estate and the elevation of the real estate business.

SOURCES: Codes, 1942, § 8920-14; Laws, 1954, ch. 318, § 14; Laws, 1960, ch. 395, § 5; reenacted, Laws, 1980, ch. 499, § 14; Laws, 1988, ch. 477, § 14, eff from and after January 1, 1989.

Cross References — Additional powers and duties of Commission with respect to real estate appraisers, see § 73-34-9.

RESEARCH REFERENCES

Am Jur. 5 Am. Jur. Pl & Pr Forms (Rev), Brokers, Forms 11 et seq. (compensation and reimbursement of brokers).

§ 73-35-29. Administrator to give bond.

The administrator, appointed by the commission, in the discretion of the commission, shall give bond in such sum and with such surety as the commission may direct and approve, and the premium thereon shall be paid by the commission.

SOURCES: Codes, 1942, § 8920-15; Laws, 1954, ch. 318, § 15; Laws, 1974, ch. 485, § 6; reenacted, Laws, 1980, ch. 499, § 15; Laws, 1988, ch. 477, § 15, eff from and after January 1, 1989.

§ 73-35-31. Penalties for violations of chapter.

(1) Any person violating a provision of this chapter shall, upon conviction of a first violation thereof, if a person, be punished by a fine or not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for a term not to exceed ninety (90) days, or both; and if a corporation, be punished by a fine of not more than Two Thousand Dollars ($2,000.00). Upon conviction of a second or subsequent violation, if a person, shall be punished by a fine of not less than One Thousand Dollars ($1,000.00) nor more than Two Thousand Dollars ($2,000.00), or by imprisonment for a term not to exceed six (6) months, or both; and if a corporation, be punished by a fine of not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00). Any officer or agent of a corporation, or any member or agent of a partnership or association, who shall personally participate in or be accessory to any violation of this chapter by such corporation, partnership or association, shall be subject to the penalties herein prescribed for individuals.

(2) In case any person, partnership, association or corporation shall have received any sum of money, or the equivalent thereto, as commission, compensation or profit by or in consequence of his violation of any provision of this chapter, such person, partnership, association or corporation shall also be liable to a penalty of not less than the amount of the sum of money so received and not more than four (4) times the sum so received, as may be determined by the court, which penalty may be sued for and recovered by any person aggrieved and for his use and benefit, in any court of competent jurisdiction.

(3) No fee, commission or other valuable consideration may be paid to a person for real estate brokerage activities as described in subsection (1) of Section 73-35-3 unless the person provides evidence of licensure under the provisions of this chapter or provides evidence of a cooperative agreement provided under the authority of Section 73-35-11.

SOURCES: Codes, 1942, § 8920-16; Laws, 1954, ch. 318, § 16; Laws, 1976, ch. 357; reenacted, Laws, 1980, ch. 499, § 16; Laws, 2005, ch. 374, § 1, eff from and after July 1, 2005.

Cross References — Powers of commission as to violations, see § 73-35-23.

Appeals, see § 73-35-25.

JUDICIAL DECISIONS

1. In general.
2. "Person aggrieved."

1. In general.

Mississippi Court of Appeals interprets Miss. Code Ann. § 73-35-31 to apply to situations in which a foreign broker or agent receives a commission from either the buyer or the seller, so that the foreign broker or agent is penalized for his unlicensed transaction, and therefore a Mississippi broker was not "aggrieved" simply because he was seeking an expected commission. Leary v. Stockman, 937 So. 2d 964 (Miss. Ct. App. 2006).

One not licensed in Mississippi as a real estate broker is liable under this statute to refund his commission on a sale of Mississippi property, where, although he first came into contact with the purchaser in another state, the effective negotiations and closing of the sale, at which he was present, took place in Mississippi. Ladner v. Harsh, 239 Miss. 46, 120 So. 2d 562 (1960).

2. "Person aggrieved."

Circuit court did not err in finding that a purchaser was not qualified to recover damages from a broker for alleged misrepresentations pursuant to any statutory provision within the Real Estate Brokers License Law of 1954, Miss. Code Ann. " 73-35-1 through 73-53-37 because the purchaser did not qualify as a "person aggrieved" within the context of the License Law, Miss. Code Ann. ' 73-35-31(2), and, therefore, ' 73-35-31 did not provide a civil cause of action that the purchaser could utilize against the broker; there is no provision in the License Law, Miss. Code Ann. ' 73-35-21, that operates as a private cause of action that a disgruntled purchaser may bring against a real estate broker. Moore v. Bailey, 46 So. 3d 375 (Miss. Ct. App. 2010), writ of certiorari denied by 49 So. 3d 636, 2010 Miss. LEXIS 560 (Miss. 2010).

Plaintiff sales associate was not a "person aggrieved" under Miss. Code Ann. § 73-35-31(2) for purposes of her claim against defendants, a real estate brokerage firm and its president, that the defendants violated Mississippi real estate laws, since to find so could leave those persons who actually paid a foreign agent without recourse or leave foreign agents subject to endless lawsuits; the sales associate had no standing to bring the claim. Saucier v. Coldwell Banker JME Realty, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 63649 (S.D. Miss. Aug. 28, 2007), affirmed by 291 Fed. Appx. 674, 2008 U.S. App. LEXIS 19406 (5th Cir. Miss. Sept. 10, 2008).

RESEARCH REFERENCES

ALR. Recovery back of money paid to unlicensed person required by law to have occupation or business license or permit to make contract. 74 A.L.R.3d 637.

Real estate broker's liability for misrepresentations as to income from or productivity of property. 81 A.L.R.3d 717.

CJS. 12 C.J.S., Brokers § 33-37.

§ 73-35-33. License required to sue for compensation; suit by salesperson in own name.

(1) No person, partnership, association or corporation shall bring or maintain an action in any court of this state for the recovery of a commission, fee or compensation for any act done or services rendered, the doing or rendering of which is prohibited under the provisions of this chapter for persons other than licensed real estate brokers, unless such person was duly licensed hereunder as a real estate broker at the time of the doing of such act or the rendering of such service.

(2) No real estate salesperson shall have the right to institute suits in his own name for the recovery of a fee, commission or compensation for services as a real estate salesperson, but any such action shall be instituted and brought by the broker employing such salesperson. However, any real estate salesperson shall have the right to bring an action in his own name if the action is against the broker employing such salesperson for the recovery of any fees owed to him.

SOURCES: Codes, 1942, § 8920-17; Laws, 1954, ch. 318, § 17; reenacted, Laws, 1980, ch. 499, § 17; Laws, 1988, ch. 477, § 16; Laws, 1992, ch. 533, § 9, eff from and after July 1, 1992.

JUDICIAL DECISIONS

1. In general.

Georgia realty company was not entitled to a commission on a real estate deal in Mississippi that was never consummated because the company, through its agent, acted as a broker in Mississippi without first being duly licensed in the state. Therefore, it could not maintain an action in any court of the state for the recovery of a commission, fee, or compensation. Transnational Ventures, Inc. v. Derr Plantation, 187 So. 3d 185 (Miss. Ct. App. 2016).

Chancery court rightly dismissed a finder's equitable claim for a "finder's fee" because he was not licensed as a real estate broker, the actions he claimed justified his compensation fell squarely within the statutory definition of a "real estate broker" and he did not allege to be a member or salaried employee of the seller, a bona fide owner of the property sold, or any person otherwise exempted. Mosley v. Triangle Townhouses, LLC, 170 So. 3d 1251 (Miss. Ct. App. 2015).

In a case in which a district court found that a real estate company attempted to negotiate the listing of a factory outlet center in contravention of Miss. Code Ann. § 73-35-33 and the real estate company, in its motion for reconsideration of the district court's order granting in part and denying in part the center's motion to dismiss, argued that the district court's ruling was too broad and that the district court ignored the central holding of the Ladner decision, in its order, the court extensively discussed the Ladner decision, and the real estate company failed to put forth any explanation as to why the court's interpretation was clearly erroneous, other than saying the ruling was too broad. The real estate company committed the one act in Mississippi qualifying them as a real estate broker; therefore, it was subject to the Mississippi Real Estate

Brokers License Law, which precluded recovery of a commission for brokerage activities and actions taken without a Mississippi license. Prism Mktg. Co., Inc. v. Casino Factory Shoppes, LLC, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 106962 (N.D. Miss. Nov. 16, 2009).

From the express words of the statute it must be assumed that it was the legislative intent to extend the application of the statute to real estate transactions and to no others, so that a broker who was not licensed as a real estate broker in Mississippi, was nevertheless entitled to recover a commission on the non-realty values involved in the sale of a going business in Mississippi, where in real estate, although significant, was not a dominant factor. Quick Shops of Miss., Inc. v. Bruce, 232 So. 2d 351 (Miss. 1970).

This section [Code 1942, § 8920-17], being in derogation of common law and penal in nature, must be strictly construed and cannot be extended by implication. Quick Shops of Miss., Inc. v. Bruce, 232 So. 2d 351 (Miss. 1970).

RESEARCH REFERENCES

ALR. Right of real-estate broker to commission where listing contract is for sale of property and it is subsequently leased to one with whom broker had negotiated. 42 A.L.R.3d 1430.

Procurement of real-estate broker's license subsequent to execution of contract for services as entitling broker to compensation for services. 80 A.L.R.3d 318.

Necessity of having real-estate broker's license in order to recover commission as affected by fact that business sold includes real property. 82 A.L.R.3d 1139.

Am Jur. 12 Am. Jur. 2d, Brokers §§ 217 et seq., 244 et seq.

CJS. 12 C.J.S., Brokers §§ 190-196.

§ 73-35-35. Commission to adopt rules and regulations.

The commission may act by a majority of the members thereof, and authority is hereby given to the commission to adopt, fix and establish all rules and regulations in its opinion necessary for the conduct of its business, the holdings of hearings before it, and otherwise generally for the enforcement and administration of the provisions of this chapter.

Further, the commission is empowered with the authority to adopt such rules and regulations as it deems appropriate to regulate the sale of timesharing and condominium properties within the state of Mississippi and the sale of timesharing and condominium properties in other states to residents of Mississippi.

SOURCES: Codes, 1942, § 8920-18; Laws, 1954, ch. 318, § 18; reenacted, Laws, 1980, ch. 499, § 18; Laws, 1983, ch. 476, § 4, eff from and after July 1, 1983.

RESEARCH REFERENCES

ALR. Property taxation of residential time-share or interval-ownership units. 80 A.L.R.4th 950.

Am Jur. 12 Am. Jur. 2d, Brokers § 14.

CJS. 12 C.J.S., Brokers §§ 13-17.

§ 73-35-37. Repealed.

Repealed by Laws of 1988, ch. 477, § 17, eff from and after January 1, 1989.

[Em, Laws, 1979, ch. 301, § 41; reenacted, Laws, 1980, ch. 499, § 19]

Editor's Note — Former § 73-35-37 provided for the repeal of §§ 73-35-1 through 73-35-35.

INTEREST ON REAL ESTATE BROKERS' ESCROW ACCOUNTS ACT

SEC.
73-35-101. Short title.
73-35-103. Definitions.
73-35-105. Interest on Real Estate Brokers' Escrow Accounts (IREBEA) program.

§ 73-35-101. Short title.

Sections 73-35-101 through 73-35-105 shall be known and may be cited as the "Interest on Real Estate Brokers' Escrow Accounts Act."

SOURCES: Laws, 1993, ch. 408, § 1, eff from and after July 1, 1993.

Editor's Note — Laws of 2004, ch. 412, § 4, effective July 1, 2004, provides:

"SECTION 4. The Mississippi Legislature supports the efforts of the Mississippi Association of Realtors and Mississippi Bankers Association to establish a foundation dedicated to funding initiatives that will increase housing opportunity in Mississippi. The primary goal is to increase the supply of affordable housing and enhance the ability of low and middle income wage earning Mississippians to achieve the American Dream of homeownership.

"The IREBEA program created by this act shall be strictly voluntary. Buyers who wish to have their escrow deposits placed in an interest-bearing account for their own benefit still will be able to do so. Brokers who participate in the fund will be issued a "notice to customers" to be displayed in the lobby of their offices, announcing the program and outlining its objectives.

"The Mississippi Legislature does not expect real estate licensees to obtain the express permission of clients to use interest earned from their deposits to participate in this program; it is sufficient for licensees to prominently display their notice of participation in this program by posting a sign in the lobby of their offices, announcing the program and outlining its objectives."

RESEARCH REFERENCES

Am Jur. 28 Am. Jur. 2d, Escrow §§ 1 et seq.

77 Am. Jur. 2d, Vendor and Purchaser §§ 260 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Escrow, Form 8.1 (Complaint, petition, or declaration — By buyer — Against seller and escrow agent — Performance of obligations by buyer).

8 Am. Jur. Pl & Pr Forms (Rev), Escrow, Forms 100:1 et seq.

8 Am. Jur. Legal Forms 2d, Escrow, Forms 100:1 et seq.

§ 73-35-103. Definitions.

As used in Sections 73-35-101 through 73-35-105, the following terms shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Real estate broker" or "broker" means an individual, partnership or corporation licensed pursuant to Section 73-35-1 et seq., and as defined under Section 73-35-3(1).

(b) "IREBEA" means the program created and governed by Sections 73-35-101 through 73-35-105.

(c) "Interest earnings" means the total interest earnings generated by the IREBEA at each individual financial institution.

(d) "Local affiliate of Habitat for Humanity International, Inc.," means an independently run 501(c)(3) organization that acts in partnership with and on behalf of Habitat for Humanity International, Inc., to coordinate all aspects of Habitat home building in a specific geographical area.

(e) Local affiliate of Fuller Center for Housing, Inc., means an independently run 501(c)(3) organization that acts in partnership with and on behalf of Fuller Center for Housing, Inc., to coordinate all aspects of home building on behalf of the Fuller Center in a specific geographical area.

(f) "Chair of real estate" means the endowment fund held and administered by any Mississippi university. For those universities which do not designate or which do not have a "chair of real estate," the term "chair of real estate" includes a professorship of real estate.

SOURCES: Laws, 1993, ch. 408, § 2; Laws, 2004, ch. 412, § 5; Laws, 2010, ch. 539, § 1, eff from and after passage (approved Apr. 27, 2010.)

Editor's Note — Laws of 2004, ch. 412, § 4, effective July 1, 2004, provides:

"SECTION 4. The Mississippi Legislature supports the efforts of the Mississippi Association of Realtors and Mississippi Bankers Association to establish a foundation dedicated to funding initiatives that will increase housing opportunity in Mississippi. The primary goal is to increase the supply of affordable housing and enhance the ability of low and middle income wage earning Mississippians to achieve the American Dream of homeownership.

"The IREBEA program created by this act shall be strictly voluntary. Buyers who wish to have their escrow deposits placed in an interest-bearing account for their own benefit still will be able to do so. Brokers who participate in the fund will be issued a "notice to customers" to be displayed in the lobby of their offices, announcing the program and outlining its objectives.

"The Mississippi Legislature does not expect real estate licensees to obtain the express permission of clients to use interest earned from their deposits to participate in this program; it is sufficient for licensees to prominently display their notice of participation in this program by posting a sign in the lobby of their offices, announcing the program and outlining its objectives."

Cross References — Definitions applicable generally with respect to Chapter 35 pertaining to real estate brokers, see § 73-35-3.

Federal Aspects — Provisions of Section 501(c)(3), see 26 USCS § 501(c)(3).

RESEARCH REFERENCES

Am Jur. 9 Am. Jur. Pl & Pr Forms (Rev), Escrow, Form 8.1 (Complaint, petition, or declaration — By buyer — Against seller and escrow agent — Performance of obligations by buyer).

§ 73-35-105. Interest on Real Estate Brokers' Escrow Accounts (IREBEA) program.

(1) The IREBEA program shall be a voluntary program based upon willing participation by real estate brokers, whether proprietorships, partnerships or professional corporations.

(2) IREBEA shall apply to all clients or customers of the participating brokers whose funds on deposit are either nominal in amount or to be held for a short period of time.

(3) The following principles shall apply to clients' or customers' funds which are held by brokers who elect to participate in IREBEA:

(a) No earnings on the IREBEA accounts may be made available to or utilized by a broker.

(b) Upon the request of the client or customer, earnings may be made available to the client whenever possible upon deposited funds which are neither nominal in amount nor to be held for a short period of time; however, traditional broker-client or broker-customer relationships do not compel brokers either to invest clients' or customers' funds or to advise clients or customers to make their funds productive.

(c) Clients' or customers' funds which are nominal in amount or to be held for a short period of time shall be retained in an interest-bearing checking or savings trust account with the interest, less any service charge or fees, made payable at least quarterly to any chair of real estate, local affiliate of Habitat for Humanity International, Inc., or local affiliate of Fuller Center for Housing, Inc. A separate accounting shall be made annually for all funds received.

(d) The broker shall select in writing that the chair of real estate, local affiliate of Habitat for Humanity International, Inc., or local affiliate of Fuller Center for Housing, Inc., shall be the beneficiary of such funds for the interest earnings on such funds. The interest earnings shall not be divided between one or more beneficiaries.

(e) The determination of whether clients' or customers' funds are nominal in amount or to be held for a short period of time rests in the sound judgment of each broker, and no charge of ethical impropriety or other breach of professional conduct shall attend a broker's exercise of judgment in that regard.

(f) Notification to clients or customers whose funds are nominal in amount or to be held for a short period of time is unnecessary for those brokers who choose to participate in the program. Participation in the IREBEA program is accomplished by the broker's written notification to an authorized financial institution. That communication shall contain an expression of the broker's desire to participate in the program and, if the institution has not already received appropriate notification, advice regarding the Internal Revenue Service's approval of the taxability of earned interest or dividends to a chair of real estate, or a local affiliate of Habitat for Humanity International, Inc., or local affiliate of Fuller Center for Housing, Inc.

(4) The following principles shall apply to those clients' or customers' funds held in trust accounts by brokers who elect not to participate in IREBEA:

(a) No earnings from the funds may be made available to any broker.

(b) Upon the request of a client or customer, earnings may be made available to the client or customer whenever possible upon deposited funds which are neither nominal in amount nor to be held for a short period of time; however, traditional broker-client or broker-customer relationships do not compel brokers either to invest clients' or customers' funds or to advise clients or customers to make their funds productive.

(c) Clients' or customers' funds which are nominal in amount or to be held for short periods of time, and for which individual income generation allocation is not arranged with a financial institution, shall be retained in a noninterest-bearing demand trust account.

(d) The determination of whether clients' or customers' funds are nominal in amount or to be held for a short period of time rests in the sound judgment of each broker, and no charge of ethical impropriety or other breach of professional conduct shall attend a broker's exercise of judgment in that regard.

(5) The Mississippi Real Estate Commission shall adopt appropriate and necessary rules in compliance with the provisions of Sections 73-35-101 through 73-35-105.

SOURCES: Laws, 1993, ch. 408, § 3; Laws, 2004, ch. 412, § 6; Laws, 2010, ch. 539, § 2, eff from and after passage (approved Apr. 27, 2010.)

Editor's Note — Laws of 2004, ch. 412, § 4, effective July 1, 2004, provides:

"SECTION 4. The Mississippi Legislature supports the efforts of the Mississippi Association of Realtors and Mississippi Bankers Association to establish a foundation dedicated to funding initiatives that will increase housing opportunity in Mississippi. The primary goal is to increase the supply of affordable housing and enhance the ability of low and middle income wage earning Mississippians to achieve the American Dream of homeownership.

"The IREBEA program created by this act shall be strictly voluntary. Buyers who wish to have their escrow deposits placed in an interest-bearing account for their own benefit still will be able to do so. Brokers who participate in the fund will be issued a "notice to customers" to be displayed in the lobby of their offices, announcing the program and outlining its objectives.

"The Mississippi Legislature does not expect real estate licensees to obtain the express permission of clients to use interest earned from their deposits to participate in this program; it is sufficient for licensees to prominently display their notice of participation in this program by posting a sign in the lobby of their offices, announcing the program and outlining its objectives."

Federal Aspects — Section 501(c)(3) of the Federal Internal Revenue Code is classified at 26 USCS § 501(c)(3).

RESEARCH REFERENCES

Am Jur. 28 Am. Jur. 2d, Escrow §§ 1 et seq.

77 Am. Jur. 2d, Vendor and Purchaser §§ 260 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Escrow, Form 8.1 (Complaint, petition, or declaration — By buyer — Against seller and escrow agent — Performance of obligations by buyer).

8 Am. Jur. Pl & Pr Forms (Rev), Escrow, Forms 100:1 et seq.

8 Am. Jur. Legal Forms 2d, Escrow, Forms 100:1 et seq.

CHAPTER 36

Registered Foresters

Sec.
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§ 73-36-1. Short title.

This chapter may be cited as the "Foresters Registration Law of 1977."

SOURCES: Laws, 1977, ch. 475, § 1; reenacted, Laws, 1983, ch. 326, § 1; reenacted, Laws, 1991, ch. 330, § 1; reenacted without change, Laws, 2004, ch. 416, § 1, eff from and after July 1, 2004.

Cross References — Applicability of the registration provisions of this chapter to the state forester, see § 49-19-3.

Licensing and registration of state forester, see § 49-19-3.

Licensing of certified timberland real estate appraisers, see § 73-34-19.

§ 73-36-3. Definitions.

As used in this chapter the following words and phrases shall include the meanings ascribed in this section unless the context clearly requires a different meaning:

(a) The term "person" means a natural person.

(b) The term "forester" means a person who, by reason of his knowledge of the natural sciences, mathematics, economics and the principles of forestry, and by his demonstrated skills acquired through professional forestry education as set forth in Section 73-36-21, is qualified to engage in the practice of forestry and who also has been duly registered and holds a current valid license issued by the board.

(c) The term "registered forester" means a person who has been registered and licensed pursuant to this chapter.

(d) The term "practice of forestry" means any professional forestry service, including but not limited to consultation, investigation, evaluation, valuation, planning, recommending silvicultural or harvesting practices or responsible supervision of any forestry activities in connection with any public or private lands wherein the public welfare and property are concerned or involved when such professional services require the application of forestry principles, knowledge and data.

(e) The term "board" means the State Board of Registration for Foresters.

SOURCES: Laws, 1977, ch. 475, § 2; reenacted, Laws, 1983, ch. 326, § 2; Laws, 1989, ch. 383, § 1; reenacted, Laws, 1991, ch. 330, § 2; reenacted without change, Laws, 1999, ch. 445, § 1; reenacted without change, Laws, 2004, ch. 416, § 2, eff from and after July 1, 2004.

ATTORNEY GENERAL OPINIONS

The sale of standing timber does not constitute the practice of forestry so long as the individual performing these services does not hold himself out to be, or otherwise indicate that he is, a registered forester. See Sections 73-36-3(d), 73-36-5, 73-36-7 and 73-36-9. Wood, February 16, 1996, A.G. Op. #96-0055.

§ 73-36-5. Practice of forestry without complying with registration requirements prohibited.

In order to benefit and protect the public and the forest resources, no person in either public or private capacity shall practice or offer to practice forestry, unless he shall first have submitted evidence that he is qualified so to practice and shall be registered by the board or unless he is specifically exempted from registration under this chapter. It is unlawful for any person to practice or offer to practice forestry in this state, as defined by this chapter, or to use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a forester, unless the person has been duly registered or is exempt from registration under this chapter.

This chapter shall not be construed to prevent or to affect:

(a) The conduct of business and support services including: tree planting, timber stand improvement, pesticide application, pest control, site preparation, heavy equipment operation, prescribed fire application, timber buying, logging contracting, timber cruising, timber marking and the application of best management practices.

(b) The application of forestry principles and procedures on any timberlands, woodlands or forest in which the person, firm, partnership or corporation owns the timberlands, woodlands or forest; or persons, firms, partnerships and corporations having the right to manage and administer forestlands in any legal manner.

(c) The work of an employee or a subordinate of any forester holding a license under this chapter; if that work is done under the direction, supervision and responsibility of a person holding a license under this chapter.

(d) The practice of forestry by officers and employees of the United States government on federally-owned lands.

(e) The practice of forestry by officers and employees of the State of Mississippi on state-owned lands.

(f) Employees of the federal government, state government and educational institutions of the State of Mississippi who, in the exercise of their assigned duties, conduct forestry education programs.

(g) Persons who hold valid licenses prior to July 1, 1989.

SOURCES: Laws, 1977, ch. 475, § 3; reenacted, Laws, 1983, ch. 326, § 3; Laws, 1989, ch. 383, § 2; reenacted, Laws, 1991, ch. 330, § 3; Laws, 2000, ch. 601, § 1; reenacted without change, Laws, 2004, ch. 416, § 3, eff from and after July 1, 2004.

Cross References — Practice of forestry defined, see § 73-36-3.

Exemption from provisions of chapter for those who practice forestry without compensation, see § 73-36-7.

ATTORNEY GENERAL OPINIONS

The sale of standing timber does not constitute the practice of forestry so long as the individual performing these services does not hold himself out to be, or otherwise indicate that he is, a registered forester. See Sections 73-36-3(d), 73-36-7 and 73-36-9. Wood, February 16, 1996, A.G. Op. #96-0055.

§ 73-36-7. Exemption as to acts not performed for compensation.

Nothing contained in this chapter shall be construed as preventing any person, firm, partnership or corporation from practicing forestry or managing woodlands, forests or trees on any land, provided such acts are not performed or offered to the public for compensation, unless otherwise exempted in Section 73-36-5.

SOURCES: Laws, 1977, ch. 475, § 4; reenacted, Laws, 1983, ch. 326, § 4; reenacted, Laws, 1991, ch. 330, § 4; reenacted without change, Laws, 1999, ch. 445, § 3; reenacted without change, Laws, 2004, ch. 416, § 4; Laws, 2007, ch. 398, § 1, eff from and after July 1, 2007.

Cross References — Additional exemptions, see § 73-36-5.

ATTORNEY GENERAL OPINIONS

The sale of standing timber does not constitute the practice of forestry so long as the individual performing these services does not hold himself out to be, or otherwise indicate that he is, a registered forester. See Sections 73-36-3(d), 73-36-5, and 73-36-9. Wood, February 16, 1996, A.G. Op. #96-0055.

§ 73-36-9. Board of registration for foresters; appointment of members; terms; filling of vacancies; removal of members.

There is hereby created the State Board of Registration for Foresters of the State of Mississippi for the purposes of safeguarding forests by regulating the practice of forestry and requiring that persons practicing or offering to practice forestry to be registered. The board shall be composed of seven (7) members appointed by the Governor with the advice and consent of the Senate. One (1) member shall be appointed from each of the six (6) forestry commission districts as constituted on January 1, 1999, and one (1) member shall be appointed at large. The State Forester of Mississippi shall serve as an ex officio member of the board. Each of the members shall be a forester within the meaning of this chapter with at least three (3) years' experience in such field, and a resident and citizen of the State of Mississippi at the time of his appointment. Within thirty (30) days after July 1, 1977, the Governor shall appoint the members, designating a term of office of one (1), two (2), three (3), four (4) or five (5) years for each of the members as appointed; provided, however, two (2) members shall serve a term of one (1) year and two (2) shall serve a term of four (4) years. As the terms of office of the members so appointed expire, successors shall be appointed for terms of five (5) years. Any vacancy occurring in the membership of the board shall be filled by the Governor for the unexpired term. The Governor shall have the right, upon the approval of a majority of the board, to remove any members of the board for inefficiency, neglect of duty or dishonorable conduct.

SOURCES: Laws, 1977, ch. 475, § 5; reenacted and amended, Laws, 1983, ch. 326, § 5; reenacted, Laws, 1991, ch. 330, § 5; Laws, 2000, ch. 601, § 2; reenacted without change, Laws, 2004, ch. 416, § 5; Laws, 2007, ch. 398, § 2, eff from and after July 1, 2007.

Editor's Note — At the direction of co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, "July 1, 1977" was substituted for "passage of this chapter" in the sixth sentence.

Cross References — Selection and qualifications of state forester, see § 49-19-3.

Forester defined, see § 73-36-3.

At time of appointment to board, member must have held a license as registered forester for at least five years, see § 73-36-11.

ATTORNEY GENERAL OPINIONS

The sale of standing timber does not constitute the practice of forestry so long as the individual performing these services does not hold himself out to be, or otherwise indicate that he is, a registered forester. See Sections 73-36-3(d), 73-36-5, and 73-36-7. Wood, February 16, 1996, A.G. Op. #96-0055.

§ 73-36-11. Board members must have been licensed as registered foresters for 5 years.

No person shall be appointed a member of the board unless the person at the time appointed has held a license as a registered forester for at least five (5) years.

SOURCES: Laws, 1977, ch. 475, § 6(1); reenacted and amended, Laws, 1983, ch. 326, § 6; reenacted, Laws, 1991, ch. 330, § 6; Laws, 2000, ch. 601, § 3; reenacted without change, Laws, 2004, ch. 416, § 6, eff from and after July 1, 2004.

§ 73-36-13. Election of officers; seal; quorum.

Each year the board shall elect one (1) of its members as chairman, one (1) as vice chairman, and one (1) as secretary, and each shall perform the usual duties of such offices. The board may adopt an official seal. Four (4) members of the board shall constitute a quorum, and a majority vote of those present at any meeting shall be necessary for the adoption of any order proposed or the disposition of other business coming before the board.

SOURCES: Laws, 1977, ch. 475, § 6(2); reenacted, Laws, 1983, ch. 326, § 7; reenacted, Laws, 1991, ch. 330, § 7; Laws, 2000, ch. 601, § 4; reenacted without change, Laws, 2004, ch. 416, § 7, eff from and after July 1, 2004.

Cross References — Bonding of Secretary, see § 73-36-17.

§ 73-36-15. Board meetings; notice of meetings.

The board shall hold at least two (2) regular meetings during each year and such other meetings as the chairman may find necessary. Notice of the time and place of the meetings of the board shall be mailed to each of the members of the board at least five (5) days before the meeting and, in addition, shall be posted as provided by the rules and regulations of the board at least five (5) days prior to the meeting.

SOURCES: Laws, 1977, ch. 475, § 7; reenacted, Laws, 1983, ch. 326, § 8; reenacted, Laws, 1991, ch. 330, § 8; Laws, 2000, ch. 601, § 5; reenacted without change, Laws, 2004, ch. 416, § 8, eff from and after July 1, 2004.

§ 73-36-17. Compensation of board members; operating fund; bonding of secretary.

Each member of the board shall receive per diem compensation as authorized by Section 25-3-69, and shall be reimbursed for such other expenses at the same rate and under the same conditions as provided for public officers and employees in Section 25-3-41. The board shall pay for all expenses incurred by the board, including clerical help as may be needed, if itemized statements of the expenses are first approved by order of the board entered on its minutes. The board shall not expend in any fiscal year more monies than the amount of fees collected. All fees shall be paid to the secretary of the board and the secretary shall deposit all monies received under this chapter in the State Treasury. All such monies shall be kept in a special fund in the State Treasury known as the "State Board of Registered Foresters Fund" and shall be used for the administration of this chapter. The funds shall not lapse at the end of each year. All expenditures from the fund shall be by requisition to the Executive Director of the Department of Finance and Administration and signed by the board chairman. The secretary of the board shall be under a surety bond in the penal sum of Five Thousand Dollars ($5,000.00) with a surety company authorized to do business in this state, the bond to be conditioned for the faithful performance of his duties, and the fee shall be paid by the board.

SOURCES: Laws, 1977, ch. 475, § 8; reenacted and amended, Laws, 1983, ch. 326, § 9; reenacted and amended, Laws, 1991, ch. 330, § 9; Laws, 2000, ch. 601, § 6; reenacted without change, Laws, 2004, ch. 416, § 9, eff from and after July 1, 2004.

Cross References — Application for registration fees, see § 73-36-23.

Fees for subsequent examinations following failure of initial examination, see § 73-36-25.

Renewal fee, see § 73-36-29.

§ 73-36-19. Powers and duties of board.

(1) The State Board of Registration for Foresters shall have the following powers and duties:

(a) To adopt rules and regulations governing the holding of its meetings, hearings, applications for licenses and any and all other duties provided by this chapter.

(b) To establish and promulgate standards of practice and a code of ethics for registered foresters and provide for the enforcement thereof.

(c) To establish minimum requirements for professional continuing education.

(d) To prepare a biennial roster showing the names, business addresses and such other information as the board may deem necessary of all foresters registered under this chapter, and to provide copies to the registered foresters and the public. A copy of the roster shall be filed with the Secretary of State of the State of Mississippi on or before April 1 in the year such roster is prepared.

(e) To issue, suspend or revoke licenses and to take all actions necessary.

(2) At any hearing before the board, any member may administer oaths to witnesses appearing before the board. If any person shall refuse to testify or to produce any books, papers or documents, the board may present its petition to

any court of competent jurisdiction within the state setting forth the facts, and then the court, in a proper case, may issue its subpoena to the person requiring his attendance before the court and to testify or to produce such books, papers and documents as may be deemed necessary and pertinent thereto. Any person failing or refusing to obey the subpoena of the court may be proceeded against in the same manner as for refusal to obey any other subpoena of the court.

(3) The board shall keep a record of its proceedings and a register of all applications for registration. The register shall show the name, age and residence of each applicant, the date of the application and the board's action on the application and any other information as may be deemed necessary by the board. The board shall submit an annual report to the Governor and a report to the regular session of the Legislature. The report to the Legislature shall include a financial statement of the transactions of the board during the year.

SOURCES: Laws, 1977, ch. 475, § 9; reenacted and amended, Laws, 1983, ch. 326, § 10; reenacted, Laws, 1991, ch. 330, § 10; Laws, 2000, ch. 601, § 7; reenacted without change, Laws, 2004, ch. 416, § 10, eff from and after July 1, 2004.

Cross References — Board authorized to review and investigate certain appeals, see § 73-36-21.

Suspension or revocation of licenses, see § 73-36-33.

§ 73-36-21. Eligibility for registration as registered forester; board authorized to review and investigate certain appeals.

(1) Any person who has graduated with a bachelor's degree or higher degree from a university or college of forestry in a curriculum in forestry acceptable to the board and found by the board to be substantially equivalent to curricula in schools of forestry accredited by the Society of American Foresters shall be eligible for registration as a registered forester, and a license shall be issued upon application and payment of the required fee, if the person files an application for registration with the board and successfully passes a written and/or oral examination.

(2) The board may review and investigate the denial of any license, upon appeal by the denied applicant, and the board may issue a license to an applicant who met the requirements for such license at the time of application.

SOURCES: Laws, 1977, ch. 475, § 10; reenacted and amended, Laws, 1983, ch. 326, § 11; Laws, 1989, ch. 383, § 3; reenacted, Laws, 1991, ch. 330, § 11; Laws, 2000, ch. 601, § 8; Laws, 2002, ch. 400, § 1; reenacted without change, Laws, 2004, ch. 416, § 11, eff from and after July 1, 2004.

Cross References — Definition of "forester", see § 73-36-3.

§ 73-36-23. Application for registration; fees.

Applications for registration shall be made on forms prescribed and furnished by the board. The initial registration fee for a license as a registered forester shall be fixed by the board, but shall not exceed Fifty Dollars ($50.00). If the board denies the issuance of a license to any applicant, the fee deposited shall be retained by the board as an application fee.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Laws, 1977, ch. 475, § 11; reenacted and amended, Laws, 1983, ch. 326, § 12; reenacted, Laws, 1991, ch. 330, § 12; Laws, 1997, ch. 588, § 60; Laws, 2000, ch. 601, § 9; reenacted without change, Laws, 2004, ch. 416, § 12, eff from and after July 1, 2004.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

§ 73-36-25. Written examinations.

When written examinations are required, they shall be held at such time and place as the board shall determine. The methods of procedure shall be prescribed by the board. A candidate failing an examination may apply for reexamination at the expiration of six (6) months and shall be entitled to one (1) reexamination without payment of an additional fee. Subsequent examinations may be granted upon payment of a fee to be determined by the board, but not in excess of Fifty Dollars ($50.00).

SOURCES: Laws, 1977, ch. 475, § 12; reenacted and amended, Laws, 1983, ch. 326, § 13; reenacted, Laws, 1991, ch. 330, § 13; reenacted without change, Laws, 1999, ch. 445, § 12; reenacted without change, Laws, 2004, ch. 416, § 13, eff from and after July 1, 2004.

§ 73-36-27. Licenses.

The board shall issue a properly authenticated, serially numbered license upon payment of the registration fee to any applicant who in the opinion of the board has satisfactorily met all the requirements of this chapter and the rules and regulations of the board duly adopted under this chapter. The issuance of a license by the board shall be evidence that the person named therein is entitled to all the rights and privileges of a registered forester while the license remains unrevoked or unexpired.

SOURCES: Laws, 1977, ch. 475, § 13; reenacted, Laws, 1983, ch. 326, § 14; reenacted, Laws, 1991, ch. 330, § 14; Laws, 2000, ch. 601, § 10; reenacted without change, Laws, 2004, ch. 416, § 14, eff from and after July 1, 2004.

Cross References — Expiration and renewal of license, see § 73-36-29.
Obtaining license through reciprocity, see § 73-36-31.
Penalties for practice of forestry by unregistered person, see § 73-36-35.

§ 73-36-29. Expiration of license; notice; renewal fee.

Except as provided in Section 33-1-39, all licenses issued under the provisions of this chapter shall expire after December 31 of odd numbered years and shall become invalid after that date unless renewed. The secretary of the board shall mail a notice to every person registered under this chapter notifying the person of the date of the expiration of his license and the amount of fee required for its renewal for two (2) years. The notice shall be mailed to the latest known address, according to the board's records, at least one (1) month in advance of the date of the expiration of the license. The board shall from time to time fix the fee for renewal of licenses, provided the fee shall not exceed the amount of One Hundred Dollars ($100.00) for two (2) years' renewal. Any registrant failing to renew his license and applying for a license shall be required to pay a fee as set by the board not to exceed twice the total amount of the license fees had his license been continued in effect, and also to comply with such other reasonable requirements as may be established by rules and regulations of the board.

SOURCES: Laws, 1977, ch. 475, § 14; reenacted and amended, Laws, 1983, ch. 326, § 15; reenacted, Laws, 1991, ch. 330, § 15; Laws, 2000, ch. 601, § 11; reenacted without change, Laws, 2004, ch. 416, § 15; Laws, 2007, ch. 309, § 29, eff from and after passage (approved Mar. 8, 2007.)

§ 73-36-31. Reciprocity.

A person not a resident of and having no established place of business in Mississippi, or who has recently become a resident, may use the title of registered forester in Mississippi, provided: (a) such person is legally licensed as a registered forester in his own state or county and has submitted evidence to the board that he is so licensed and that the requirements for registration are at least substantially equivalent to the requirements of this chapter; and (b) the state or county in which he is so licensed observes these same rules of reciprocity in regard to persons licensed under this chapter. Each person seeking the privileges of reciprocity granted under this chapter shall submit his application to the board and must receive a card or certificate from the board before exercising such privileges. The fee for obtaining a license through reciprocity shall be the same as charged a Mississippi licensee. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 1977, ch. 475, § 15; reenacted, Laws, 1983, ch. 326, § 16; reenacted, Laws, 1991, ch. 330, § 16; Laws, 2000, ch. 601, § 12; reenacted without change, Laws, 2004, ch. 416, § 16; Laws, 2013, ch. 350, § 35, eff from and after July 1, 2013.

Comparable Laws from other States — Alabama: Code of Ala. § 34-12-11.
Arkansas: A.C.A. § 17-31-308.
Georgia: O.C.G.A. § 12-6-54.
North Carolina: N.C. Gen. Stat. § 89B-9.
South Carolina: S.C. Code Ann. § 48-27-120

JUDICIAL DECISIONS

1. In general.

Defendants were entitled to a dismissal of a count of a complaint which alleged a violation of the statute where the plaintiffs' failed to allege that the defendants received any sum of money in conjunction with the sale of the plaintiffs' home and, furthermore, in their reply to the counterclaim, the plaintiffs acknowledged they had not paid the defendant the contractual fee to which it was entitled from the sale of the plaintiffs' property. Taylor v. Crye-Leike, Inc., — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 9876 (N.D. Miss. June 29, 2000).

§ 73-36-33. Suspension or revocation of license; review; hiring services of investigator; inspections.

(1) The board shall have the power, after notice and hearing, to suspend or revoke the license of any registrant who (a) is found guilty by the board of fraud or gross negligence in the practice of professional forestry; (b) fails to comply with board rules and regulations; (c) is found guilty by the board of unprofessional or unethical conduct; or (d) has had his license suspended or revoked for cause in another jurisdiction.

(2) Any person may prefer charges of fraud or gross negligence in connection with any forestry practice against any registrant. Such charges shall be in writing, shall be sworn to by the person making them, and shall be filed with the secretary of the board. All charges shall be heard by the board pursuant to its rules and regulations without undue delay.

(3) Any applicant whose license is suspended or revoked by the board may apply for a review of the proceedings with reference to such suspension or revocation by appealing to the Chancery Court of the First Judicial District of Hinds County, Mississippi, provided a notice of appeal is filed by such applicant with the clerk of said court within sixty (60) days from entry of an order by the board suspending or revoking his license, provided said applicant files with said notice of appeal a bond to be approved by the court assuring the prompt payment of any and all costs of said appeal, said amount to be fixed by the court. Upon the filing of such notice of appeal and posting of such bond, the clerk of the said court shall notify the secretary of the board thereof and the record of the proceedings involved shall be prepared by the secretary and forwarded to the court within a period of sixty (60) days from such notice by the clerk. The court shall thereupon review the proceedings on the record presented and may hear such additional testimony as to the court may appear material and dispose of the appeal in termtime or in vacation, and the court may sustain or dismiss the appeal, or modify or vacate the order complained of, but in case the order is modified or vacated, the court may also, in its discretion, remand the matter to the board for such further proceedings not

inconsistent with the court's order as, in the opinion of the court, justice may require. The decision of the chancery court may be appealed as other cases to the Supreme Court.

(4) The board is authorized to secure, by contract, the services of an investigator when deemed necessary by the board to properly consider any charge then before it. The board may, at its discretion, establish a program of routine inspections.

(5) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1977, ch. 475, § 64; reenacted and amended, Laws, 1983, ch. 326, § 17; reenacted, Laws, 1991, ch. 330, § 17; Laws, 1996, ch. 507, § 70; reenacted without change, Laws, 1999, ch. 445, § 16; reenacted without change, Laws, 2004, ch. 416, § 17, eff from and after July 1, 2004.

Cross References — Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

§ 73-36-35. Practice of forestry by unregistered person; penalty; preferring charges.

Any person who practices or offers to practice the profession of forestry in this state without being registered in accordance with this chapter, or any person who uses in connection with his name, or otherwise assumes, uses or advertises any title or description tending to convey the impression that he is a registered forester without being registered in accordance with this chapter, or any person who presents or attempts to use as his own the license of another, or any person who gives any false or forged evidence of any kind to the board or any member in obtaining a license, or any person who attempts to use an expired or revoked license, or any person, firm, partnership or corporation who violates any of the provisions of this chapter and has not been issued an administrative fine by the board for the violation is guilty of a misdemeanor and, upon conviction, shall be fined not more than Five Thousand Dollars ($5,000.00) for each violation. The board, or any person or persons as may be designated by the board to act in its stead, is empowered to prefer charges for any violations of this chapter in any court of competent jurisdiction. It shall be the duty of all duly constituted officers of the law of this state to enforce the provisions of this chapter and to prosecute any persons, firms, partnerships or corporations violating same. Except as otherwise authorized in Section 7-5-39, the Attorney General of the state or his designated assistant shall act as legal advisor of the board and render such assistance as may be necessary in carrying out the provisions of this chapter.

SOURCES: Laws, 1977, ch. 475, § 17; reenacted, Laws, 1983, ch. 326, § 18; reenacted, Laws, 1991, ch. 330, § 18; Laws, 2000, ch. 601, § 13; reenacted without change, Laws, 2004, ch. 416, § 18; Laws, 2007, ch. 398, § 3; Laws, 2012, ch. 546, § 39, eff from and after July 1, 2012.

Cross References — Additional penalties, see § 73-36-36.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 73-36-36. Administrative fine; notice and hearing; appeal.

In addition to the penalties provided under Section 73-36-33 and Section 73-36-35, any person, found by the board to be in violation of this chapter or any rule or regulation of the board, shall be subject to an administrative fine of not more than One Thousand Dollars ($1,000.00) for each violation. The person shall be given at least ten (10) days' written notice and an opportunity for a hearing before the board. If the administrative fine is not paid within ninety (90) days after the date of the board's order, the order shall become a judgment and may be filed and executed. Any person aggrieved of the board's order may appeal the order to the Circuit Court of Hinds County within thirty (30) days after the date of the order of the board is issued. Appeal shall be on the record made before the board.

SOURCES: Laws, 2000, ch. 601, § 15; reenacted without change, Laws, 2004, ch. 416, § 19, eff from and after July 1, 2004.

§ 73-36-37. Repealed.

Repealed by Laws of 2004, ch. 416, § 20, eff from and after July 1, 2004.

[Laws, 1979, ch. 301, § 26; Laws, 1979, ch. 357, § 19; Laws, 1983, ch. 326, § 19; Laws, 1991, ch. 330, § 19; Laws, 1999, ch. 445, § 18; Laws, 2000, ch. 601, § 14, eff from and after July 1, 2000]

Editor's Note — Former § 73-36-37 provided for a repealer on §§ 73-36-1 through 73-36-35.

CHAPTER 37

Sanitarians

Sec.
73-37-1 through 73-37-25. Repealed.
73-37-27. Repeal of Sections 73-37-1 through 73-37-25.

§§ 73-37-1 through 73-37-25. Repealed.

Repealed by Laws of 1980, ch. 532, § 14, eff December 31, 1982.

§ 73-37-1. [Codes, 1942, § 8920-31; Laws, 1966, ch. 479, § 1; reenacted, Laws, 1980, ch. 532, §§ 1-5]

§ 73-37-3. [Codes, 1942, § 8920-32; Laws, 1966, ch. 479, § 2; reenacted, Laws, 1980, ch. 532, §§ 1-5]

§ 73-37-5. [Codes, 1942, § 8920-33; Laws, 1966, ch. 479, § 3; reenacted, Laws, 1980, ch. 532, §§ 1-5]

§ 73-37-7. [Codes, 1942, § 8920-34; Laws, 1966, ch. 479, § 4; reenacted, Laws, 1980, ch. 532, §§ 1-5]

§ 73-37-9. [Codes, 1942, § 8920-35; Laws, 1966, ch. 479, § 5; reenacted, Laws, 1980, ch. 532, §§ 1-5]

§ 73-37-11. [Codes, 1942, § 8920-36; Laws, 1966, ch. 479, § 6; reenacted and amended, Laws, 1980, ch. 532, §§ 6-8]

§ 73-37-13. [Codes, 1942, § 8920-37; Laws, 1966, ch. 479, § 7; reenacted and amended, Laws, 1980, ch. 532, §§ 6-8]

§ 73-37-15. [Codes, 1942, § 8920-38; Laws, 1966, ch. 479, § 8; reenacted and amended, Laws, 1980, ch. 532, §§ 6-8]

§ 73-37-17. [Codes, 1942, § 8920-39; Laws, 1966, ch. 479, § 9; reenacted, Laws, 1980, ch. 532, §§ 9-13]

§ 73-37-19. [Codes, 1942, § 8920-40; Laws, 1966, ch. 479, § 10; reenacted, Laws, 1980, ch. 532, §§ 9-13]

§ 73-37-21. [Codes, 1942, § 8920-41; Laws, 1966, ch. 479, § 11; reenacted, Laws, 1980, ch. 532, §§ 9-13]

§ 73-37-23. [Codes, 1942, § 8920-42; Laws, 1966, ch. 479, § 12; reenacted, Laws, 1980, ch. 532, §§ 9-13]

§ 73-37-25. [Codes, 1942, § 8920-43; Laws, 1966, ch. 479, § 13; reenacted, Laws, 1980, ch. 532, §§ 9-13]

Editor's Note — Former § 73-37-1 established the state board of registration for sanitarians.

Former § 73-37-3 defined certain words and phrases dealing with sanitarians.

Former § 73-37-5 outlined the requirements and procedure for registration as a sanitarian.

Former § 73-37-7 provided for an application to be a sanitarian-in-training.

Former § 73-37-9 provided for examinations for those wishing to register as sanitarians.

Former § 73-37-11 provided for the qualifications for membership on the state board of registration for sanitarians.

Former § 73-37-13 provided for the terms of members on the board.

Former § 73-37-15 provided for the organization of the board, including officers, powers and duties, and compensation.

Former § 73-37-17 provided that all proceedings of the board were to be recorded.

Former § 73-37-19 provided for the form of application for registration and for fees.

Former § 73-37-21 provided for the suspension or revocation of a certificate of registration.

Former § 73-37-23 provided for reciprocity agreements.

Former 73-37-25 prohibited certain uses of the title "Registered Sanitarian" and provided for penalties.

§ 73-37-27. Repeal of Sections 73-37-1 through 73-37-25.

Sections 73-37-1 through 73-37-25, Mississippi Code of 1972, which create the State Board of Registration for Sanitarians and prescribe its duties and powers, shall stand repealed as of December 31, 1982.

SOURCES: Laws, 1979, ch. 301, § 42; Laws, 1980, ch. 532, § 14, eff from and after July 1, 1980.

CHAPTER 38

Speech Pathologists and Audiologists

Sec.
73-38-1. Administration of chapter.
73-38-3. Definitions.
73-38-5. Licenses required of speech-language pathologists and audiologists.
73-38-7. Persons and practices exempt.
73-38-9. Qualifications and requirements for license or registration.
73-38-11. Council of advisors in speech-language pathology and audiology.
73-38-13. General powers and duties of state board of health in regard to speech-language pathology and audiology.
73-38-15. Funding; compensation of council members.
73-38-17. State board of health to issue licenses and notices and to publish licensure standards and rules and regulations.
73-38-19. Application for examination.
73-38-21. Written examination.
73-38-23. Licensing of persons currently licensed in other jurisdictions and of persons certified as clinically competent by ASHA.
73-38-25. Temporary license; registration of aides by licensed supervisors.
73-38-27. Denial, suspension and revocation of licenses.
73-38-29. Expiration and renewal of licenses.
73-38-31. Fees [Repealed effective July 1, 2020].
73-38-33. Continuing education requirements.
73-38-35. Penalties.
73-38-36. Disposition of fees and penalties.
73-38-37. Repealed.
73-38-38. Repealed

§ 73-38-1. Administration of chapter.

The State Board of Health, established and empowered by Section 41-3-1 et seq., shall discharge as additional duties and responsibilities the provisions of this chapter in the examination, licensing and regulation of persons who provide services in the areas of speech-language pathology and audiology.

SOURCES: Laws, 1975, ch. 495; Laws, 1980, ch. 546, § 1; Laws, 1988, ch. 411, § 1; reenacted without change, Laws, 2002, ch. 461, § 1; brought forward without change, Laws, 2005, ch. 455, § 1, eff from and after June 30, 2005.

Editor's Note — Section 41-3-1, referred to in this section, was repealed by § 1, ch. 514, Laws of 2007, effective March 30, 2007.

Cross References — Regulation of hearing aid dealers, see §§ 73-14-1 et seq.

§ 73-38-3. Definitions.

The following definitions apply as used in this chapter, unless the context otherwise requires:

(a) "Board" means the Mississippi State Board of Health.

(b) "Council" means the Mississippi Council of Advisors in Speech-Language Pathology and Audiology as established in Section 73-38-11.

(c) "Person" means any individual, organization or corporate body, except that only an individual may be licensed under this chapter.

(d) "Speech-language pathologist" means an individual who practices speech-language pathology and who presents himself to the public by any title or description of services incorporating the words "speech pathologist," "speech-language pathologist," "speech therapist," "speech correctionist," "speech clinician," "language pathologist," "language therapist," "logopedist," "communicologist," "voice therapist," "voice pathologist," or any similar title or description of services.

(e) "Speech-language pathology" means the application of principles, methods and procedures for the measurement, testing, evaluation, prediction, counseling, instruction, habilitation or rehabilitation related to the development and disorders of speech, voice, language, swallowing or feeding, or for the purpose of evaluating, preventing, ameliorating or modifying such disorders and conditions in individuals and/or groups of individuals.

(f) "Audiologist" means an individual who practices audiology and who presents himself to the public by any title or description of services incorporating the words "audiologist," "hearing clinician," "hearing therapist," or any similar title or description of service.

(g) "Audiology" means the application of principles, methods and procedures of measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation or rehabilitation related to disorders of hearing and balance for the purpose of evaluating, identifying, preventing, ameliorating or modifying such disorders and conditions in individuals and/or groups of individuals; and for the purpose of this subsection the words "habilitation" and "rehabilitation" include, but are not limited to, hearing aid dispensing and evaluation, and auditory training, and speech reading.

(h) "Speech-language pathology aide" means an individual who meets minimum qualifications which the council may establish for speech-language pathology aides, which qualifications shall be less than those established by this chapter as necessary for licensure as a speech-language pathologist, and who works under the supervision of a licensed speech-language pathologist.

(i) "Audiology aide" means an individual who meets minimum qualifications which the council may establish for audiology aides, which qualifications shall be less than those established by this chapter as necessary for licensure as an audiologist, and who works under the supervision of a licensed audiologist.

(j) "ASHA" means the American Speech-Language-Hearing Association.

SOURCES: Laws, 1975, ch. 495, § 2; Laws, 1980, ch. 546, § 2; Laws, 1988, ch. 411, § 2; Laws, 1997, ch. 518, § 1; reenacted and amended, Laws, 2002, ch. 461, § 2; brought forward without change, Laws, 2005, ch. 455, § 2, eff from and after June 30, 2005.

Cross References — Hearing aid dealer's representation as being audiologist, as defined by this section, as constituting unethical conduct, see § 73-14-3.

§ 73-38-5. Licenses required of speech-language pathologists and audiologists.

(1) Licensure shall be granted either in speech-language pathology or audiology independently. A person may be licensed in both areas if he meets the respective qualifications.

(2) No person shall practice or represent himself as a speech-language pathologist or audiologist in this state unless he is licensed in accordance with the provisions of this chapter.

SOURCES: Laws, 1975, ch. 495, § 3; Laws, 1980, ch. 546, § 3; Laws, 1988, ch. 411; reenacted without change, Laws, 2002, ch. 461, § 3; brought forward without change, Laws, 2005, ch. 455, § 3, eff from and after June 30, 2005.

ATTORNEY GENERAL OPINIONS

Speech pathologists and audiologists may not practice speech pathology or audiology without fulfilling qualifications and requirements for licensure specified in law, but speech pathology aide and audiology aide may work under supervision of licensed speech pathologists/audiologists; Board of Health should establish regulations governing "practice" of speech pathology aides and audiology aides under supervision of licensed speech pathologists/audiologists, and aides must practice within parameters established by Board. Short, Oct. 5, 1992, A.G. Op. #92-0703.

§ 73-38-7. Persons and practices exempt.

Nothing in this chapter shall be construed as preventing or restricting:

(a) A physician from engaging in the practice of medicine in this state, or a person using an audiometer to test hearing under the direct supervision of a licensed physician, provided such person does not present himself to the public by any title or description of services incorporating the words "audiologist," "hearing clinician," "hearing therapist," or any similar title or description of services;

(b) Any person licensed as a hearing aid dispenser from measuring and testing hearing in relation to the fitting, usage and dispensing of hearing aids or rendering post fitting services to his clients or using any title provided in Sections 73-14-1 through 73-14-47;

(c) Any person licensed in this state by any other law from engaging in the profession or occupation for which he is licensed;

(d) A person from being employed or working in a volunteer capacity without a license, as provided in this chapter, as a speech-language pathologist or audiologist by the government of the United States or by the governing authority of any school district or private or parochial school in this state, if such person performs speech-language pathology or audiology services solely within the confines or under the jurisdiction of the organization by which he is employed, or working in a volunteer capacity; however, such person may, without obtaining a license under this chapter, consult with or disseminate his research findings and other scientific information to speech-language pathologists and audiologists outside the jurisdiction of the organization by which he is employed; such person may also offer lectures to the public for a fee, monetary or other, without being licensed under this chapter; such person may additionally elect to be subject to this chapter;

(e) The activities and services of persons pursuing a course of study leading to a degree in speech-language pathology at a college or university if such activities and services constitute a part of the supervised course of study and that such person is designated speech-language pathology intern, speech-language pathology trainee, or by other such titles clearly indicating the training status appropriate to his level of training;

(f) The activities and services of a person pursuing a course of study leading to a degree in audiology at a college or university if such activities and services constitute a part of a supervised course of study and such person is designated audiology intern, audiology trainee, or by any other such titles clearly indicating the training status appropriate to his level of training;

(g) The performance of speech-language pathology or audiology services in this state by any person not a resident of this state who is not licensed under this chapter if such services are performed for no more than five (5) days in any calendar year and in cooperation with a speech-language pathologist or audiologist licensed under this chapter, and if such person meets the qualifications and requirements for application for licensure described in subsections (a) through (c) of Section 73-38-9; however, a person not a resident of this state who is not licensed under this chapter, but who is licensed under the law of another state which has established licensure requirements at least equivalent to those established by Section 73-38-9, or who is the holder of the ASHA Certificate of Clinical Competence in Speech-Language Pathology or Audiology or its equivalent, may offer speech-language pathology or audiology services in this state for no more than thirty (30) days in any calendar year if such services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter; or

(h) Any person employed by a private industry or firm for the purpose of conducting hearing tests incident to the operations of such firm or industry relative to its employees and employment practices.

SOURCES: Laws, 1975, ch. 495, § 4; Laws, 1980, ch. 546, § 4; Laws, 1988, ch. 411, § 4; reenacted without change, Laws, 2002, ch. 461, § 4; brought forward without change, Laws, 2005, ch. 455, § 4, eff from and after June 30, 2005.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (f). The word “or” was deleted from the end. The Joint Committee ratified the correction at its August 5, 2008 meeting.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 24 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 73.

§ 73-38-9. Qualifications and requirements for license or registration.

To be eligible for licensure by the board as a speech-language pathologist or audiologist and to be eligible for registration as a speech-language pathology aide or audiology aide, a person shall:

(a) Be of good moral character;

(b)(1) For speech-language pathologists or audiologists, possess at least a master's degree or its equivalent in the area of speech-language pathology or audiology, as the case may be, from an educational institution recognized by the board;

(2) For speech-language pathology aide or audiology aide, the board shall set minimum educational standards which shall be less than a bachelor's degree;

(c) For speech-language pathologists and audiologists, submit evidence of the completion of the educational, clinical experience and employment requirements, which requirements shall be based on appropriate national standards and prescribed by the rules and regulations adopted pursuant to this chapter;

(d) For speech-language pathologists and audiologists, pass an examination approved by the board. This examination may be taken either before or after the completion of the employment requirement specified pursuant to subsection (c) of this section;

(e) For speech-language pathology aides and audiology aides, no examination shall be required.

SOURCES: Laws, 1975, ch. 495, § 5; Laws, 1980, ch. 546, § 5; Laws, 1988, ch. 411, § 5; reenacted without change, Laws, 2002, ch. 461, § 5; brought forward without change, Laws, 2005, ch. 455, § 5, eff from and after June 30, 2005.

Cross References — Application for examination, see § 73-38-19.

Written examination, see § 73-38-21.

Temporary licensing for applicants who fulfill all requirements for licensure except professional employment and/or examination, see § 73-38-25.

§ 73-38-11. Council of advisors in speech-language pathology and audiology.

(1) There is established the Mississippi Council of Advisors in Speech-Language Pathology and Audiology under the jurisdiction of the Mississippi State Board of Health. The council shall aid the board in administering the provisions of this chapter.

(2) The council shall be comprised of seven (7) members. Two (2) council members shall be speech-language pathologists, two (2) council members shall

be audiologists, and two (2) council members shall be a licensed member of the health professions and a member of the public, both with an interest in the consumption of speech-language pathology or audiology services, with the seventh council member being a licensed physician, board certified in otolaryngology. All council members who are speech-language pathologists or audiologists shall at all times be holders of active and valid licenses for the practice of speech-language pathology and audiology in this state and shall be holders of the ASHA Certificate of Clinical Competence in Speech-Language Pathology or Audiology or its equivalent.

(3) Two (2) members shall be appointed from each Supreme Court district as presently constituted; and one (1) member shall be appointed from the state at large. No more than three (3) members of the council shall be appointed from any one (1) Supreme Court district as presently constituted. The board shall, not later than August 31, 2002, appoint the health profession's member of the advisory council for a term of two (2) years, and the public member of the advisory council for a term of three (3) years. Thereafter, appointments made shall be for three-year terms, with no person being eligible to serve more than two (2) full consecutive terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year.

(4) Not less than sixty (60) days before the end of each calendar year, the Mississippi Speech-Language-Hearing Association will submit the names of at least three (3) persons for each speech-language pathologist or audiologist vacancy and the Mississippi Eye, Ear, Nose and Throat Association will submit the names of at least three (3) persons for an otolaryngologist vacancy occurring at the end of the calendar year. The board shall make all appointments of council members from the list of names submitted by each association within sixty (60) days after receiving the lists. The board shall solicit nominations for the health profession member from licensed speech pathologists and audiologists, and shall appoint the health profession member from the nominations submitted. In the event of a vacancy, the board shall, within thirty (30) days after such vacancy, appoint a person from the previous list of names submitted who shall fill the unexpired term.

(5) The council shall meet during the first month of each calendar year to select a chairman and for other appropriate purposes. At least one (1) additional meeting shall be held before the end of each calendar year. Further meetings may be convened at the call of the chairman or the written request of any two (2) council members. All meetings of the council shall be open to the public, except that the council may hold closed sessions to prepare, approve, grade or administer examinations, or upon request of an applicant who fails an examination, to prepare a response indicating any reason for his failure. The public shall be notified of meetings of the council through at least one (1) newspaper of general circulation in the state and public information channels not less than ten (10) calendar days before such meetings are held.

(6) Four (4) members of the council shall constitute a quorum for all purposes, but in no instance shall a meeting of four (4) council members be considered a quorum if there is not at least one (1) speech-language pathologist and one (1) audiologist present.

SOURCES: Laws, 1975, ch. 495, § 6; Laws, 1980, ch. 546, § 6; Laws, 1988, ch. 411, § 6; Laws, 1997, ch. 518, § 2; reenacted and amended, Laws, 2002, ch. 461, § 6; brought forward without change, Laws, 2005, ch. 455, § 6, eff from and after June 30, 2005.

§ 73-38-13. General powers and duties of state board of health in regard to speech-language pathology and audiology.

(1) The board shall have full authority to investigate and evaluate each and every applicant applying for a license to practice speech-language pathology or a license to practice audiology with the advice of the council.

(2) The board shall have the authority to issue subpoenas, examine witnesses and administer oaths, and shall, at its discretion, investigate allegations or practices violating the provisions of this chapter.

(3) The board shall adopt such rules and regulations not inconsistent with the laws of this state as may be necessary to effectuate the provisions of this chapter and may amend or repeal the same as may be necessary for such purposes, with the advice of the council.

(4) The conferral or enumeration of specific powers elsewhere in this chapter shall not be construed as a limitation of the general functions conferred by this section.

SOURCES: Laws, 1975, ch. 495, § 7; Laws, 1980, ch. 546, § 7; Laws, 1988, ch. 411, § 7; reenacted without change, Laws, 2002, ch. 461, § 7; brought forward without change, Laws, 2005, ch. 455, § 7, eff from and after June 30, 2005.

Cross References — Provision that the State Board of Health shall publish and disseminate to all licensed dietitians such rules and regulations as it may adopt under the authority conferred by this section, see § 73-10-21.

§ 73-38-15. Funding; compensation of council members.

(1) The administration of the provisions of this chapter shall be financed from income accruing from fees, licenses and other charges assessed and collected by the board and from such other funds available to the board.

(2) The board shall receive and account for all funds received and shall keep such funds in a separate fund. Funds collected under the provisions of this chapter shall be used solely for the compensation and expenses of the council and the board and to administer the provisions of this chapter, which may include full or partial financing of continuing education programs promulgated by the council under Section 73-38-33. Such funds shall be subject to audit by the Auditor of the State of Mississippi.

(3) Members of the council shall receive no compensation for their services, but shall receive travel and other expenses necessarily incurred in the discharge of official duties.

SOURCES: Laws, 1975, ch. 495, § 8; Laws, 1980, ch. 546, § 8; Laws, 1983, ch. 522, § 46; reenacted, Laws, 1988, ch. 411, § 8; Laws, 1997, ch. 518, § 3; reenacted

without change, Laws, 2002, ch. 461, § 8; brought forward without change, Laws, 2005, ch. 455, § 8, eff from and after June 30, 2005.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Traveling expenses of state officers and employees, see § 25-3-41.

Disposition of fees and penalties received by the state board of health under this chapter, see § 73-38-36.

§ 73-38-17. State board of health to issue licenses and notices and to publish licensure standards and rules and regulations.

(1) The board shall issue licenses and notices of renewal, revocation, suspension or reinstatement and shall publish annually the names of persons licensed under this chapter.

(2) The board shall publish and disseminate to all licensees, in an appropriate manner, the licensure standards prescribed by this chapter, any amendments thereto, and such rules and regulations as the board may adopt under the authority vested by Section 73-38-13 within sixty (60) days of their adoptions.

SOURCES: Laws, 1975, ch. 495, § 9; Laws, 1980, ch. 546, § 9; reenacted, Laws, 1988, ch. 411, § 9; reenacted without change, Laws, 2002, ch. 461, § 9; brought forward without change, Laws, 2005, ch. 455, § 9, eff from and after June 30, 2005.

§ 73-38-19. Application for examination.

(1) A person eligible for licensure under Section 73-38-9 and desirous of licensure shall make application for examination to the board at least thirty (30) days prior to the date of examination upon a form and in such manner as the board shall prescribe.

(2) Any application shall be accompanied by the fee prescribed by Section 73-38-31, which fee shall in no case be refunded.

(3) A person who fails an examination may make application for reexamination if he again meets the requirements of subsections (1) and (2) of this section.

(4) A person certified by ASHA or licensed under the law of another state, a territory of the United States, or the District of Columbia as a speech-language pathologist or audiologist who has applied for examination under this section may perform speech-language pathology and audiology services in this state prior to a determination by the board that such person has successfully completed examination for licensure.

(5) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Laws, 1975, ch. 495, § 10; Laws, 1980, ch. 546, § 10; Laws, 1988, ch. 411, § 10; Laws, 1997, ch. 588, § 61; reenacted without change, Laws, 2002, ch. 461, § 10; brought forward without change, Laws, 2005, ch. 455, § 10, eff from and after June 30, 2005.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Written examination, see § 73-38-21.

Fees, see § 73-38-31.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 30 et seq.

§ 73-38-21. Written examination.

(1) Each applicant for licensure under this chapter shall be examined by the board in written examination. Standards for acceptable performance shall be established by the board with the advice of the council.

(2) Applicants for licensure shall be examined at a time and place and under such supervision as the board may determine. Examinations shall be given at such places within this state as the board may determine at least twice each year and the board shall make public, in a manner it considers appropriate, notice of such examinations at least sixty (60) days prior to their administration, and shall appropriately notify all individual examination applicants of the time and place of their administration.

(3) The board may examine in whatever theoretical or applied field of speech-language pathology and audiology it considers appropriate and may examine with regard to a person's professional skills and judgment in the utilization of speech-language pathology or audiology techniques and methods.

(4) The board shall maintain a permanent record of all examination scores.

SOURCES: Laws, 1975, ch. 495, § 11; Laws, 1980, ch. 546, § 11; Laws, 1988, ch. 411, § 11; reenacted without change, Laws, 2002, ch. 461, § 11; brought forward without change, Laws, 2005, ch. 455, § 11, eff from and after June 30, 2005.

Cross References — Temporary licensing for applicants who fulfill all requirements for licensure except professional employment and/or examination, see § 73-38-25.

§ 73-38-23. Licensing of persons currently licensed in other jurisdictions and of persons certified as clinically competent by ASHA.

(1) The board may waive the examination for licensure of any applicant who presents proof of current licensure in another state, including the District of Columbia, or territory of the United States which maintains professional standards considered by the council to be equivalent to those set forth in this chapter. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(2) The board shall waive the examination for licensure of any person certified as clinically competent by ASHA in the area for which such person is applying for licensure.

SOURCES: Laws, 1975, ch. 495, § 12; Laws, 1980, ch. 546, § 12; Laws, 1988, ch. 411, § 12; reenacted and amended, Laws, 2002, ch. 461, § 12; brought forward without change, Laws, 2005, ch. 455, § 12; Laws, 2013, ch. 350, § 36, eff from and after July 1, 2013.

Comparable Laws from other States — Arkansas: A.C.A. § 17-100-304.
Florida: Fla. Stat. § 468.1185.
Georgia: O.C.G.A. § 43-44-9.
Louisiana: La. R.S. § 37:2660.
North Carolina: N.C. Gen. Stat. § 90-296.
South Carolina: S.C. Code Ann. § 40-67-250.
Tennessee: Tenn. Code Ann. § 63-17-113.

§ 73-38-25. Temporary license; registration of aides by licensed supervisors.

(1) The board shall issue a license to any person who meets the requirements of this chapter and who pays to the board the fees prescribed in Section 73-38-31.

(2)(a) An applicant who fulfills all the requirements for licensure except professional employment and/or examination may apply to the board for a temporary license.

(b) Upon receiving an application provided under subsection (2) (a), the board shall issue a temporary license which entitles the applicant to practice speech-language pathology or audiology under the supervision of a licensee with licensure in the appropriate specialty while completing the requirements for licensure.

(c) No temporary license shall be issued by the board under this section unless the applicant shows to the satisfaction of the board that he is or will be supervised and trained by a person who holds a license in the appropriate specialty.

(d) The temporary license shall be effective for a period to be determined by the department.

(3)(a) Each person licensed under this chapter who supervises a speech-language pathology or audiology aide shall register the same with the board.

(b) The licensee who supervises aides or temporary licensees is responsible for the services provided to the client by said aides or temporary licensees and may suffer suspension, revocation or other appropriate penalty for failure to exercise his responsibilities in the supervision of aides or temporary licensees.

(c) Speech-language pathology and audiology aides shall pay to the board a registration fee as prescribed in Section 73-38-31, subsection (1).

SOURCES: Laws, 1975, ch. 495, § 13; Laws, 1980, ch. 546, § 13; Laws, 1988, ch. 411, § 13; Laws, 1997, ch. 518, § 4; reenacted and amended, Laws, 2002, ch. 461, § 13; brought forward without change, Laws, 2005, ch. 455, § 13, eff from and after June 30, 2005.

Cross References — Denial suspension and revocation of licenses, see § 73-38-27.
Fees for temporary licenses, see § 73-38-31.
Continuing education requirements for license renewal, see § 73-38-33.
Penalties, see § 73-38-35.

§ 73-38-27. Denial, suspension and revocation of licenses.

(1) The board may refuse to issue or renew a license, or may suspend or revoke a license where the licensee or applicant for license has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public. Such unprofessional conduct may result from:

(a) Negligence in the practice or performance of professional services or activities;

(b) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public in the course of professional services or activities;

(c) Perpetrating or cooperating in fraud or material deception in obtaining or renewing a license or attempting the same;

(d) Being convicted of any crime which has a substantial relationship to the licensee's activities and services or an essential element of which is misstatement, fraud or dishonesty;

(e) Being convicted of any crime which is a felony under the laws of this state or the United States;

(f) Engaging in or permitting the performance of unacceptable services personally or by others working under the licensee's supervision due to the licensee's deliberate or negligent act or acts or failure to act, regardless of whether actual damage or damages to the public is established;

(g) Continued practice although the licensee has become unfit to practice as a speech-language pathologist or audiologist due to: (i) failure to keep abreast of current professional theory or practice; or (ii) physical or mental disability; the entry of an order or judgment by a court of competent jurisdiction that a licensee is in need of mental treatment or is incompetent shall constitute mental disability; or (iii) addiction or severe dependency upon alcohol or other drugs which may endanger the public by impairing the licensee's ability to practice;

(h) Having disciplinary action taken against the licensee's license in another state;

(i) Making differential, detrimental treatment against any person because of race, color, creed, sex, religion or national origin;

(j) Engaging in lewd conduct in connection with professional services or activities;

(k) Engaging in false or misleading advertising;

(*l*) Contracting, assisting or permitting unlicensed persons to perform services for which a license is required under this chapter;

(m) Violation of any probation requirements placed on a license by the board;

(n) Revealing confidential information except as may be required by law;

(o) Failing to inform clients of the fact that the client no longer needs the services or professional assistance of the licensee;

(p) Charging excessive or unreasonable fees or engaging in unreasonable collection practices;

(q) For treating or attempting to treat ailments or other health conditions of human beings other than by speech or audiology therapy as authorized by this chapter;

(r) For applying or offering to apply speech or audiology therapy, exclusive of initial evaluation or screening and exclusive of education or consultation for the prevention of physical and mental disability within the scope of speech or audiology therapy, or for acting as a speech-language pathologist or audiologist, or speech-language pathologist or audiologist aide other than under the direct, on-site supervision of a licensed speech-language pathologist or audiologist;

(s) Violations of the current codes of conduct for speech-language pathologists or audiologists, and speech-language pathologist or audiologist assistants adopted by the American Speech-Language-Hearing Association;

(t) Violations of any rules or regulations promulgated pursuant to this chapter.

(2) The board may order a licensee to submit to a reasonable physical or mental examination if the licensee's physical or mental capacity to practice safely is at issue in a disciplinary proceeding.

(3) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1975, ch. 495, § 14; Laws, 1980, ch. 546, § 14; Laws, 1988, ch. 411, § 14; Laws, 1996, ch. 507, § 71; reenacted and amended, Laws, 2002, ch. 461, § 14; brought forward without change, Laws, 2005, ch. 455, § 14, eff from and after June 30, 2005.

Cross References — Suspension, revocation or other penalty for failure of licensee who supervises aides or temporary licensees to exercise his responsibilities in the supervision of the aides or temporary licensees, see § 73-38-25.

Suspended license subject to expiration, see § 73-38-29.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 37 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 21 et seq., 41 et seq.

§ 73-38-29. Expiration and renewal of licenses.

(1) Except as provided in Section 33-1-39, licenses issued under this chapter shall expire and become invalid at midnight of the expiration date.

(2) Every person licensed under this chapter shall, on or before the license expiration date, pay a fee for the biennial renewal of license to the board. The board may suspend the license of any person who fails to have his license renewed by the expiration date. After the expiration date, the board may renew a license upon payment of a fee to the board. No person who requests renewal of license, whose license has expired, shall be required to submit to examination as a condition to renewal, if such renewal application is made within two (2) years from the date of such expiration.

(3) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other conduct or activity in violation of the order or judgment by which the license was suspended.

(4) A license revoked on disciplinary grounds is subject to expiration as provided in subsection (1) of this section, but it may not be renewed. If such license is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the fee for a license issued after the expiration date which is in effect on the last preceding regular renewal date before the date on which it is reinstated. The procedure for the reinstatement of a license that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(5) Any person who fails to renew his license within the two (2) years after the date of its expiration may not renew it, and it may not be restored, reissued

or reinstated thereafter, but such person may apply for and obtain a new license if he meets the requirements of this chapter.

SOURCES: Laws, 1975, ch. 495, § 15; Laws, 1980, ch. 546, § 15; Laws, 1986, ch. 371, § 13; reenacted, Laws, 1988, ch. 411, § 15; Laws, 1996, ch. 507, § 72; Laws, 1997, ch. 518, § 5; reenacted and amended, Laws, 2002, ch. 461, § 15; brought forward without change, Laws, 2005, ch. 455, § 15; Laws, 2007, ch. 309, § 30, eff from and after passage (approved Mar. 8, 2007.)

Cross References — Fees, see § 73-38-31.

§ 73-38-31. Fees [Repealed effective July 1, 2020].

(1) The board shall assess fees for the following purposes:

(a) Initial licensing;
(b) Renewal of licensure;
(c) License issued after expiration date;
(d) Late renewal payment penalty;
(e) Temporary license;
(f) Renewal of temporary license; and
(g) Registration of aides.

(2) Every person to whom a license is issued pursuant to this chapter shall, as a condition precedent to its issuance, and in addition to any application, examination or other fee, pay the prescribed initial license fee.

(3) Fees prescribed in subsection (1) of this section shall be exclusive and no municipality shall have the right to require any person licensed under this chapter to furnish any bond, pass any examination, or pay any license fee or occupational tax.

(4) Fees listed in subsection (1) of this section shall be commensurate to the extent feasible with the cost of fulfilling the duties of the board and council as defined by this chapter; however, no individual fee shall exceed One Hundred Dollars ($100.00).

(5) Any increase in the fees charged by the board under this section shall be in accordance with the provisions of Section 41-3-65.

SOURCES: Laws, 1975, ch. 495, § 16; Laws, 1980, ch. 546, § 16; Laws, 1986, ch. 371, § 14; Laws, 1988, ch. 411, § 16; Laws, 1997, ch. 518, § 6; reenacted without change, Laws, 2002, ch. 461, § 16; brought forward without change, Laws, 2005, ch. 455, § 16; Laws, 2016, ch. 510, § 51, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added (5).

Cross References — Disposition of fees and penalties received by state board of health under this chapter, see § 73-38-36.

§ 73-38-33. Continuing education requirements.

The board shall require the applicant for license renewal to present evidence of the satisfactory completion of continuing education requirements as determined by the board.

SOURCES: Laws, 1975, ch. 495, § 17; Laws, 1980, ch. 546, § 17; reenacted, Laws, 1988, ch. 411, § 17; reenacted without change, Laws, 2002, ch. 461, § 17; brought forward without change, Laws, 2005, ch. 455, § 17, eff from and after June 30, 2005.

Cross References — Financing of continuing education programs from funds collected under chapter, see § 73-38-15.

§ 73-38-35. Penalties.

Any person who violates any provision of this chapter shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or imprisoned in the county jail for a period not exceeding six (6) months, or both.

SOURCES: Laws, 1975, ch. 495, § 18; Laws, 1980, ch 546, § 18; reenacted, Laws, 1988, ch. 411, § 18; reenacted without change, Laws, 2002, ch. 461, § 18; brought forward without change, Laws, 2005, ch. 455, § 18, eff from and after June 30, 2005.

Cross References — Disposition of fees and penalties received by state board of health under this chapter, see § 73-38-36.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 73-38-36. Disposition of fees and penalties.

All fees collected by the State Board of Health under this chapter and any penalties collected by the board for violations of this chapter shall be deposited in a special fund hereby created in the State Treasury and shall be used for the implementation and administration of this chapter when appropriated by the Legislature for such purpose.

SOURCES: Laws, 1983, ch. 522, § 45; reenacted, Laws, 1988, ch. 411, § 19; reenacted without change, Laws, 2002, ch. 461, § 19; brought forward without change, Laws, 2005, ch. 455, § 19, eff from and after June 30, 2005.

Cross References — Requirement that state officials pay over collections to state treasury, see § 7-9-21.

§ 73-38-37. Repealed.

Repealed by Laws of 1988, ch. 411, § 20, eff from and after June 30, 1988. [Laws, 1979, ch. 301, § 43; Laws, 1980, ch. 546, § 19]

Editor's Note — Former § 73-38-37 provided for the repeal of §§ 73-38-1 through 73-38-36.

§ 73-38-38. Repealed.

Repealed by Laws of 2005, ch. 455, § 20 effective from and after June 30, 2005.

[Laws, 1997, ch. 518, § 7; Laws, 2002, ch. 461, § 20, eff from and after June 30, 2002.]

Editor's Note — Former § 73-38-38 contained an automatic repealer for §§ 73-38-1 through 73-38-36.

CHAPTER 39

Veterinarians

Sec.
73-39-1 through 73-39-37. Repealed.
73-39-39. Repealed.
73-39-41. Repealed

Mississippi Veterinary Practice Act 73-39-51

§§ 73-39-1 through 73-39-37. Repealed.

Repealed by Laws of 2005, ch. 421, § 24 effective from and after July 1, 2005.

§ 73-39-1. [Codes, 1942, § 8914-01; Laws, 1946, ch. 371, § 1; reenacted, Laws, 1980, ch. 545, § 1; reenacted, Laws, 1988, ch. 340, § 1, eff from and after July 1, 1988.]

§ 73-39-2. [Laws, 1977, ch. 336, § 1; reenacted, Laws, 1980, ch. 545, § 2; Laws, 1982, ch. 397, § 1; reenacted, Laws, 1988, ch. 340, § 2, eff from and after July 1, 1988.]

§ 73-39-3. [Codes, Hemingway's 1917, § 7947; 1930, § 7318; 1942, § 8914-02; Laws, 1914, ch. 130; Laws, 1946, ch. 371, § 2; reenacted, Laws, 1980, ch. 545, § 3; Laws, 1988, ch. 340, § 3, eff from and after July 1, 1988.]

§ 73-39-5. [Codes, Hemingway's 1917, § 7948; 1930, § 7319; 1942, § 8914-03; Laws, 1914, ch. 130; Laws, 1946, ch. 371, § 3; reenacted and amended, Laws, 1980, ch. 545, § 4; Laws, 1982, ch. 397, § 2; reenacted, Laws, 1988, ch. 340, § 4, eff from and after July 1, 1988.]

§ 73-39-7. [Codes, Hemingway's 1917, § 7949; 1930, § 7320; 1942, § 8914-04; Laws, 1914, ch. 130; Laws, 1946, ch. 371, § 4; Laws, 1971, ch. 468, § 1; reenacted and amended, Laws, 1980, ch. 545, § 5; Laws, 1982, ch. 397, § 3; reenacted, Laws, 1988, ch. 340, § 5; Laws, 1992, ch. 502, § 6, eff from and after January 1, 1993.]

§ 73-39-9. [Codes, 1942, § 8914-05; Laws, 1946, ch. 371, § 5; Laws, 1977, ch. 336, § 5; reenacted, Laws, 1980, ch. 545, § 6; Laws, 1988, ch. 340, § 6, eff from and after July 1, 1988.]

§ 73-39-11. [Codes, Hemingway's 1917, § 7950; 1930, § 7321; 1942, § 8914-06; Laws, 1916, ch. 240; Laws, 1946, ch. 371, § 6; Laws, 1971, ch. 468, § 2; reenacted, Laws, 1980, ch. 545, § 7; Laws, 1988, ch. 340, § 7, eff from and after July 1, 1988.]

§ 73-39-13. [Codes, Hemingway's 1917, § 7951; 1930, § 7322; 1942, § 8914-07; Laws, 1914, ch. 130; Laws, 1946, ch. 371, § 7; Laws, 1977, ch. 336, § 6; reenacted and amended, Laws, 1980, ch. 545, § 8; Laws, 1982, ch. 397, § 4; reenacted, Laws, 1988, ch. 340, § 8, eff from and after July 1, 1988.]

§ 73-39-15. [Codes, Hemingway's 1917, § 7952; 1930, § 7323; 1942, § 8914-08; Laws, 1914, ch. 130; Laws, 1946, ch. 371, § 8; Laws, 1977, ch. 336, § 7; reenacted, Laws, 1980, ch. 545, § 9; Laws, 1982, ch. 397, § 5; Laws, 1988, ch. 340, § 9; Laws, 1997, ch. 588, § 62, eff from and after July 1, 1997.]

§ 73-39-17. [Codes, Hemingway's 1917, § 7953; 1930, § 7324; 1942, § 8914-09; Laws, 1914, ch. 130; Laws, 1946, ch. 371, § 9; reenacted, Laws, 1980, ch. 545, § 10; Laws, 1988, ch. 340, § 10, eff from and after July 1, 1988.]

§ 73-39-19. [Codes, Hemingway's 1917, § 7954; 1930, § 7325; 1942, § 8914-10; Laws, 1914, ch. 130; Laws, 1946, ch. 371, § 10; Laws, 1977, ch. 336, § 8; reenacted, Laws, 1980, ch. 545, § 11; Laws, 1982, ch. 397, § 6; reenacted, Laws, 1988, ch. 340, § 11; Laws, 1996, ch. 507, § 73, eff from and after July 1, 1996.]

§ 73-39-20. [Laws, 1977, ch. 336, § 3; reenacted, Laws, 1980, ch. 545, § 12; Laws, 1988, ch. 340, § 12; Laws, 1996, ch. 507, § 74, eff from and after July 1, 1996.]

§ 73-39-21. [Codes, 1942, § 8914-23; Laws, 1971, ch. 468, § 5; Laws, 1978, ch. 350, § 1; reenacted and amended, Laws, 1980, ch. 545, § 13; Laws, 1983, ch. 441, § 2; reenacted, Laws, 1988, ch. 340, § 13, eff from and after July 1, 1988.]

§ 73-39-23. [Codes, 1942, § 8914-24; Laws, 1971, ch. 468, § 6; reenacted and amended, Laws, 1980, ch. 545, § 14; reenacted, Laws, 1988, ch. 340, § 14, eff from and after July 1, 1988.]

§ 73-39-25. [Codes, 1942, § 8914-25; Laws, 1971, ch. 468, § 7; reenacted, Laws, 1980, ch. 545, § 15; Laws, 1988, ch. 340, § 15, eff from and after July 1, 1988.]

§ 73-39-27. [Codes, 1942, § 8914-26; Laws, 1971, ch. 468, § 8; Laws, 1977, ch. 336, § 9; reenacted and amended, Laws, 1980, ch. 545, § 16; Laws, 1982, ch. 397, § 7; reenacted, Laws, 1988, ch. 340, § 16; Laws, 1996, ch. 507, § 75, eff from and after July 1, 1996.]

§ 73-39-29. [Codes, 1942, § 8914-21; Laws, 1971, ch. 468, § 3; reenacted, Laws, 1980, ch. 545, § 17; Laws, 1988, ch. 340, § 17, eff from and after July 1, 1988.]

§ 73-39-31. [Codes, 1942, § 8914-22; Laws, 1971, ch. 468, § 4; reenacted, Laws, 1980, ch. 545, § 18; Laws, 1988, ch. 340, § 18, eff from and after July 1, 1988.]

§ 73-39-32. [Laws, 1977, ch. 336, § 11; reenacted, Laws, 1980, ch. 545, § 19; Laws, 1988, ch. 340, § 19; Laws, 1989, ch. 432, § 1, eff from and after July 1, 1989.]

§ 73-39-33. [Codes, Hemingway's 1917, § 7956; 1930, § 7327; 1942, § 8914-12; Laws, 1914, ch. 130; Laws, 1946, ch. 371, § 12; reenacted, Laws, 1980, ch. 545, § 20; Laws, 1982, ch. 397, § 8; reenacted, Laws, 1988, ch. 340, § 20, eff from and after July 1, 1988.]

§ 73-39-34. [Laws, 1977, ch. 336, § 2; reenacted, Laws, 1980, ch. 545, § 21; Laws, 1982, ch. 397, § 9; reenacted, Laws, 1988, ch. 340, § 21, eff from and after July 1, 1988.]

§ 73-39-35. [Codes, Hemingway's 1917, § 7955; 1930, § 7326; 1942, § 8914-11; Laws, 1914, ch. 130; Laws, 1946, ch. 371, § 11; Laws, 1977, ch. 336, § 10; reenacted, Laws, 1980, ch. 545, § 22; Laws, 1988, ch. 340, § 22, eff from and after July 1, 1988.]

§ 73-39-37. [Laws, 1977, ch. 336, § 4; reenacted, Laws, 1980, ch. 545, § 23; Laws, 1988, ch. 340, § 23, eff from and after July 1, 1988.]

Editor's Note — Former §§ 73-39-1 through 73-39-37 provided for the Veterinary Practice Law of 1946. For present similar provisions, see the Mississippi Veterinary Practice Act, §§ 73-39-51 et seq.

§ 73-39-39. Repealed.

Repealed by Laws of 1988, ch. 340, § 24, eff from and after July 1, 1988.
[Laws, 1979, ch. 301, § 31; Laws, 1980, ch. 545, § 24]

Editor's Note — Former § 73-39-39 provided for the repeal of §§ 73-39-1 through 73-39-37 effective December 31, 1988.

§ 73-39-41. Repealed.

Repealed by Laws of 2005, ch. 421, § 24 effective from and after July 1, 2005.
[Laws, 1989, ch. 432, § 2, eff from and after July 1, 1989.]

Editor's Note — Former § 73-39-41 was entitled: "Property of School of Veterinary Medicine not to be used for private treatment or consultation."

MISSISSIPPI VETERINARY PRACTICE ACT

SEC.
73-39-51. Short title.
73-39-53. Definitions.
73-39-55. Board of Veterinary Medicine appointed by governor; membership; terms; vacancies; qualifications for membership; compensation; meetings; officers.
73-39-57. Powers and duties of board.
73-39-59. Licensing requirement for practice of veterinary medicine; establishment of veterinarian-client-patient relationship.
73-39-61. Exemptions from licensing requirement.
73-39-63. Practice of veterinary technology; eligibility for certification as animal technician; renewal of credentials through continual professional education; suspension, revocation, or denial of certification.
73-39-65. Grandfather provision.
73-39-67. Application for license; admission to state board examinations; license by endorsement; temporary permit to practice veterinary medicine; display of license.
73-39-69. State board examination.
73-39-71. Issuance of license by endorsement at discretion of board; board authorized to examine person qualifying for license by endorsement.
73-39-73. Veterinary faculty license.
73-39-75. Expiration and renewal of licenses; renewal fee.
73-39-77. Discipline of licensees [Paragraph (1)(t) repealed effective July 1, 2020].
73-39-79. Program of care, counseling or treatment for impaired veterinarians.
73-39-81. Appeals.
73-39-83. Disclosure of information; privileged information; waiver of privilege.
73-39-85. Immunity from liability for board members, witnesses testifying in proceedings authorized under this chapter, persons lodging a complaint pursuant to this chapter, and persons reporting an impaired veterinarian.

73-39-87. Immunity from liability for veterinarians reporting suspected incidents of animal cruelty.
73-39-89. Abandoned animals.
73-39-91. Penalties.
73-39-93. Reinstatement following suspension, revocation, or limitation of license; written application.
73-39-95. Repealed.

§ 73-39-51. Short title.

This chapter shall be known as the "Mississippi Veterinary Practice Act."

SOURCES: Laws, 2005, ch. 421, § 1; reenacted without change, Laws, 2008, ch. 447, § 1, eff from and after passage (approved Apr. 8, 2008.)

§ 73-39-53. Definitions.

When used in this chapter, these words and phrases shall be defined as follows:

(a) "Abandoned" means to forsake entirely, to neglect or refuse to provide or perform legal obligations for the care and support of an animal or to refuse to pay for treatment or other services without an assertion of good cause.

(b) "Accredited college of veterinary medicine" means any veterinary college, school or division of a university or college that offers the degree of doctor of veterinary medicine or its equivalent and that is accredited by the Council on Education of the American Veterinary Medical Association (AVMA).

(c) "Accredited program in veterinary technology/technician" means any postsecondary educational program that is accredited by the Committee on Veterinary Technician Education and Activities of the AVMA.

(d) "Animal" means any animal other than a human.

(e) "Board" means the Board of Veterinary Medicine.

(f) "Client" means the patient's owner, owner's agent or other person responsible for the patient.

(g) "Complementary, alternative and integrative therapies" means a heterogeneous group of preventive, diagnostic, and therapeutic philosophies and practices, which at the time they are performed may differ from current scientific knowledge, or whose theoretical basis and techniques may diverge from veterinary medicine routinely taught in accredited veterinary medical colleges, or both. These therapies include, but are not limited to, veterinary acupuncture, acutherapy and acupressure; veterinary homeopathy; veterinary manual or manipulative therapy (therapies based on techniques practiced in osteopathy, chiropractic medicine or physical medicine and therapy); veterinary nutraceutical therapy; and veterinary phytotherapy.

(h) "Consultation" means when a licensed veterinarian receives advice in person, telephonically, electronically or by any other method of communication, from a veterinarian licensed in this or any other state or other person whose expertise, in the opinion of the licensed veterinarian, would benefit a patient.

(i) "Certified veterinary technician" means a veterinary technician certified by the board.

(j) "Direct supervision" means a licensed veterinarian is readily available on the premises where the patient is being treated.

(k) "Educational equivalence" means the holder has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited college of veterinary medicine.

(*l*) "Extralabel use" means actual use or intended use of a drug in an animal in a manner that is not in accordance with the approved labeling. This includes, but is not limited to, use in species not listed in the labeling, use for indications (disease or other conditions) not listed in the labeling, use at dosage levels, frequencies, or routes of administration other than those stated in the labeling, and deviation from the labeled withdrawal time based on these different uses.

(m) "Impaired veterinarian" means a veterinarian who is unable to practice veterinary medicine with reasonable skill and safety because of a physical or mental disability as evidenced by a written determination from a competent authority or written consent based on clinical evidence, including deterioration of mental capacity, loss of motor skills, or abuse of drugs or alcohol of sufficient degree to diminish the person's ability to deliver competent patient care.

(n) "Indirect supervision" means a veterinarian has given either written or oral instructions for treatment of the patient and is readily available by telephone or other form of communication.

(o) "Informed consent" means the veterinarian has informed the client, in a manner that would be understood by a reasonable person, of the diagnostic and treatment options, risk assessment and prognosis and has provided the client with an estimate of the charges for veterinary services to be rendered and the client has consented to the recommended treatment.

(p) "Licensed veterinarian" means a person licensed to practice veterinary medicine in this state.

(q) "Patient" means an animal that is examined or treated by a veterinarian.

(r) "Person" means any individual, firm, partnership (general, limited or limited liability), association, joint venture, cooperative, corporation, limited liability company or any other group or combination acting in concert and whether or not acting as a principal, partner, member, trustee, fiduciary, receiver or as any other kind of legal or personal representative or as the successor in interest, assignee, agent, factor, servant, employee, director, officer or any other representative of such person.

(s) "Practice of veterinary medicine" means:

(i) To diagnose, treat, correct, change, alleviate or prevent animal disease, illness, pain, deformity, defect, injury or other physical, dental or mental conditions by any method or mode, including:

1. The prescribing, dispensing, administering or applying of any drug, medicine, biologic, apparatus, anesthetic or other therapeutic or diagnostic substance or medical or surgical technique; or

2. The using of complementary, alternative and integrative therapies; or

3. The rendering of advice or recommendation by any means including telephonic and other electronic communications with regard to any of the above.

(ii) To represent, directly or indirectly, publicly or privately, an ability and willingness to do an act described in this paragraph.

(iii) To use any title, words, abbreviation or letters in a manner or under circumstances that induce the belief that the person using them is qualified to do any act described in this paragraph.

(t) "Practice of veterinary technology" means to perform patient care or other services that require a technical understanding of veterinary medicine on the basis of written or oral instruction of a veterinarian, excluding diagnosing, prognosing, performing surgery or prescribing drugs, medicine or appliances.

(u) "Veterinarian" means a person who has received a professional veterinary medical degree from a college of veterinary medicine.

(v) "Veterinarian-client-patient relationship" means that all of the following are required:

(i) The veterinarian has assumed the responsibility for making clinical judgments regarding the health of the animal and the need for medical treatment, and the client has agreed to follow the veterinarian's instructions.

(ii) The veterinarian has sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal because the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal either by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept.

(w) "Veterinary medicine" means all branches and specialties included within the practice of veterinary medicine.

(x) "Veterinary premises" means any premises or facility where the practice of veterinary medicine occurs, including, but not limited to, a mobile clinic, outpatient clinic, satellite clinic or veterinary hospital or clinic, but shall not include the premises of a veterinary client, research facility, a federal military base or an accredited college of veterinary medicine.

(y) "Veterinary prescription drug" means a drug that may not be dispensed without the prescription of a veterinarian and that bears the label statement: "CAUTION: Federal law restricts this drug to use by or on the order of a licensed veterinarian."

(z) "Veterinary technician" means a person certified by the board as a veterinary technician.

(aa) "Veterinary technologist" means a graduate of a four-year accredited program in veterinary technology.

SOURCES: Laws, 2005, ch. 421, § 2; reenacted without change, Laws, 2008, ch. 447, § 2, eff from and after passage (approved Apr. 8, 2008.)

§ 73-39-55. Board of Veterinary Medicine appointed by governor; membership; terms; vacancies; qualifications for membership; compensation; meetings; officers.

(1) A Board of Veterinary Medicine shall be appointed by the Governor and shall consist of five (5) licensed veterinarians, with at least one (1) member from each of the Supreme Court districts of the state and not more than two (2) members from the same Supreme Court district. All members of the Board of Veterinary Medicine shall be veterinarians who have practiced in this state for a period of not less than five (5) years and shall be graduates of a school of veterinary medicine recognized by the American Veterinary Medical Association. Appointments shall be for a five-year term or to fill an unexpired term. The Governor shall fill all vacancies on the board as they shall occur by appointment from a list of three (3) eligible veterinarians submitted by the Mississippi Veterinary Medical Association for each vacancy. If the vacancy to be filled is caused by expiration of the term, death, resignation or inability to serve as a board member whose residence is in a Supreme Court district having two (2) members on the board, the Mississippi Veterinary Medical Association shall submit six (6) names: three (3) from the Supreme Court district in which the former board member resided and three (3) from the Supreme Court district which had only one (1) member on the board, and the Governor shall fill the vacancy by appointment of one (1) of the six (6) nominees. All appointments shall be with the advice and consent of the Senate.

Members of the board serving on the predecessor board under Section 73-39-5 on July 1, 2005, may continue as members of the board until the expiration of the term for which they were appointed. Vacancies due to death, resignation or removal shall be filled for the remainder of the unexpired term in the same manner as regular appointments.

(a) A licensed veterinarian shall be qualified to serve as a member of the board if he has been licensed to practice veterinary medicine in this state for the five (5) years immediately preceding the time of his appointment.

(b) Each member of the board shall be paid in accordance with Section 25-3-69 for each day or substantial portion thereof if he is engaged in the work of the board, in addition to such reimbursement for travel and other expenses as is allowed under Section 25-3-41.

(2) The board shall meet at least once each year at the time and place fixed by rule of the board. Other necessary meetings may be called by the board by giving notice as may be required by rule. Except as may otherwise be provided, a majority of the board constitutes a quorum. Meetings shall be open and public except that the board may meet in closed session to prepare, approve, administer or grade examinations or to deliberate the qualification of an applicant for license or the disposition of a proceeding to discipline a licensed veterinarian in accordance with Section 25-41-7.

(3) The board annually shall elect officers from its membership as may be prescribed by rule. Officers of the board serve for terms of one (1) year and until a successor is elected, without limitation on the number of terms an officer may serve. The duties of officers shall be prescribed by rule.

SOURCES: Laws, 2005, ch. 421, § 3; reenacted without change, Laws, 2008, ch. 447, § 3, eff from and after passage (approved Apr. 8, 2008.)

Editor's Note — Former § 73-39-5, referred to in this section, was repealed by Laws of 2005, ch. 421, § 24, effective from and after July 1, 2005, and provided for the creation and composition of the Board of Veterinary Medicine. Similar present provisions are contained in this section.

§ 73-39-57. Powers and duties of board.

The board may:

(a) Adopt, amend or repeal all rules necessary for its government and all regulations necessary to implement this chapter, including the establishment and publication of standards of practice and professional conduct for the practice of veterinary medicine.

(b) Adopt, promulgate and enforce rules and regulations relating to specific duties and responsibilities; certification, registration or licensure; and other matters pertaining to veterinary technicians or nonlicensed persons consistent with this chapter.

(c) Initiate disciplinary procedures, hold hearings, reprimand, suspend, revoke or refuse to issue or renew credentials and perform any other acts that may be necessary to regulate veterinary technicians and technologists.

(d) Examine by established protocol the qualifications and fitness of applicants for a license to practice veterinary medicine in this state.

(e) Issue, renew or deny the licenses and temporary permits to practice veterinary medicine.

(f) Limit, suspend or revoke the licenses of disciplined veterinarians or otherwise discipline licensed veterinarians consistent with this chapter and applicable rules and regulations.

(g) Establish and publish annually a schedule of fees for licensing and certification.

(h) Conduct investigations of suspected violations of this chapter to determine whether there are sufficient grounds to initiate disciplinary proceedings.

(i) Inspect veterinary premises and equipment, including practice vehicles, on a triennial basis and assess an inspection fee in the amount of One Hundred Dollars ($100.00) per inspection and an additional fee of Fifty Dollars ($50.00) for each licensed veterinarian employed by the inspected veterinary establishment.

(j) Hold hearings on all matters properly brought before the board, to administer oaths, receive evidence, make necessary determinations and enter orders consistent with the findings. The board may require by subpoena the attendance and testimony of witnesses and the production of papers, records or other documentary evidence and commission depositions. The board may designate one or more of its members to serve as its hearing officer. The board shall adopt rules and regulations for hearings before the board and the rules shall afford any person appearing before the board the safeguards of procedural due process. Formal rules of evidence shall not apply.

(k) Employ full- or part-time personnel necessary to implement this chapter and purchase or rent necessary office space, equipment and supplies.

(*l*) Appoint from its own membership one or more members to act as representatives of the board at any meeting within or outside the state.

(m) Bring proceedings in the courts against any person for the enforcement of this chapter or any regulations made pursuant thereto.

The powers enumerated herein are granted for the purpose of enabling the board to supervise effectively the practice of veterinary medicine and veterinary technology and are to be construed liberally to accomplish this objective.

SOURCES: Laws, 2005, ch. 421, § 4; reenacted and amended, Laws, 2008, ch. 447, § 4, eff from and after passage (approved Apr. 8, 2008.)

§ 73-39-59. Licensing requirement for practice of veterinary medicine; establishment of veterinarian-client-patient relationship.

(1) No person may practice veterinary medicine in the state who is not a licensed veterinarian or the holder of a valid temporary permit issued by the board unless otherwise exempt under this chapter.

(2) No person may practice veterinary medicine in the state except within the context of a veterinarian-client-patient relationship.

(3) A veterinarian-client-patient relationship cannot be established solely by telephonic or other electronic means.

SOURCES: Laws, 2005, ch. 421, § 5; reenacted without change, Laws, 2008, ch. 447, § 5, eff from and after passage (approved Apr. 8, 2008.)

Cross References — Practice of veterinary medicine and veterinarian-client-patient relationship defined, see § 73-39-53.

Renewal of licenses, see § 73-39-75.

§ 73-39-61. Exemptions from licensing requirement.

This chapter shall not be construed to prohibit:

(a) Any employee of the federal, state or local government performing his official duties.

(b) Any student in an accredited college of veterinary medicine or an accredited program in veterinary technology performing duties or actions assigned by instructors or working under the direct supervision of a licensed veterinarian.

(c) Any person advising or performing acts that the board has designated by rule as accepted livestock management practices.

(d) Any person providing consultation to a licensed veterinarian in this state on the care and management of a patient.

(e) Any member in good standing of another licensed or regulated profession within any state, or any member of an organization or group approved by the board, providing assistance requested by a veterinarian licensed in the state, acting with informed consent from the client, and acting under the direct or indirect supervision and control of the licensed veterinarian. Providing assistance involves hands-on active participation in the treatment and care of the patient. The licensed veterinarian shall maintain responsibility for the veterinarian-client-patient relationship.

(f) Any veterinarian employed by an accredited college of veterinary medicine providing assistance requested by a veterinarian licensed in the state, acting with informed consent from the client, and acting under the direct or indirect supervision and control of the licensed veterinarian. Providing assistance involves hands-on active participation in the treatment and care of the patient. The licensed veterinarian shall maintain responsibility for the veterinarian-client-patient relationship.

(g) Any pharmacist, merchant or manufacturer selling at his regular place of business medicines, feed, appliances or other products used in the prevention or treatment of animal diseases as permitted by law.

(h) Any person lawfully engaged in horseshoeing.

(i) Any person rendering advice without expectation of compensation.

(j) Any owner of an animal and any of the owner's regular employees caring for and treating the animal belonging to such owner, except when the ownership of the animal was transferred for purposes of circumventing this chapter. A veterinarian-client-patient relationship must exist when prescription drugs or nonprescription drugs intended for extralabel use are administered, dispensed or prescribed.

(k) Any instructor at an accredited college of veterinary medicine or accredited program in veterinary technology performing his regular functions or any person lecturing or giving instructions or demonstrations at an accredited college of veterinary medicine, accredited program in veterinary technology or in a veterinary or veterinary technology continuing education course or seminar.

(*l*) Any person selling or applying pesticides, insecticides or herbicides as permitted by law.

(m) Any person engaging in bona fide scientific research that reasonably requires experimentation involving animals.

(n) Any certified veterinary technician or other employee of a licensed veterinarian performing duties other than diagnosis, prognosis, prescription or surgery under the direction and supervision of the veterinarian who shall be responsible for the performance of the employee.

(o) Any graduate of a nonaccredited college of veterinary medicine who is in the process of obtaining educational equivalence and is performing duties or actions assigned by instructors in an accredited college of veterinary medicine.

(p) Any person who, without expectation of compensation, provides emergency veterinary care in an emergency or disaster situation.

(q) Any animal shelter employee acting under the supervision of a licensed veterinarian or authorized by the board to perform euthanasia in the course and scope of employment.

(r) Any wildlife rehabilitator that is licensed by a federal or state agency performing duties in accordance with its licensure authority.

SOURCES: Laws, 2005, ch. 421, § 6; reenacted without change, Laws, 2008, ch. 447, § 6, eff from and after passage (approved Apr. 8, 2008.)

§ 73-39-63. Practice of veterinary technology; eligibility for certification as animal technician; renewal of credentials through continual professional education; suspension, revocation, or denial of certification.

(1) The practice of veterinary technology is a privilege granted by legislative authority to maintain public health, safety and welfare and to protect the public from being misled by unauthorized individuals.

(2) An individual who has graduated from a veterinary technology or technician program that is accredited according to the standards adopted by the American Veterinary Medical Association's Committee on Veterinary Technician/Technology Education and Activities, and who has filed the application and the requisite fees shall be eligible to take the examination for certification as an animal technician.

(3) Veterinary technicians and technologists applying for certification shall be required to pass the Veterinary Technician National Examination, with scores as set by the board, before receiving certification.

(4) All certified veterinary technicians and technologists shall be required to complete continuing professional education as prescribed by rule to renew their credentials.

(5) After a hearing, the board may suspend, revoke or deny the issuance or renewal of certification of any veterinary technician or technologist who is found guilty of any of the following:

(a) Fraud or misrepresentation in applying for certification.

(b) Criminal offense relating to veterinary medicine.

(c) Any violation of the Uniform Controlled Substances Law.

(d) Convicted of cruelty to animals.

(e) Violation of any of the rules or regulations of the board.

SOURCES: Laws, 2005, ch. 421, § 7; reenacted and amended, Laws, 2008, ch. 447, § 7, eff from and after passage (approved Apr. 8, 2008.)

Cross References — Practice of veterinary technology defined, see § 73-39-53.

§ 73-39-65. Grandfather provision.

Any person who holds a valid license to practice veterinary medicine in this state on July 1, 2005, shall be recognized as a licensed veterinarian and shall be entitled to retain this status so long as he complies with this chapter.

SOURCES: Laws, 2005, ch. 421, § 8; reenacted without change, Laws, 2008, ch. 447, § 8, eff from and after passage (approved Apr. 8, 2008.)

§ 73-39-67. Application for license; admission to state board examinations; license by endorsement; temporary permit to practice veterinary medicine; display of license.

(1) To obtain a license to practice veterinary medicine, a person shall file a written application and application fee with the board. The application shall show that the applicant is a graduate of an accredited college of veterinary medicine or has the educational equivalence as set by the board. The application shall also show that the applicant is a person of good moral character and any other information and proof as the board may require.

(2) If the board determines that the applicant possesses the proper qualifications, it shall admit the applicant to the next examination, or if the applicant is eligible for license by endorsement, the board may grant him a license. If an applicant is found not qualified to take the examination or for a license by endorsement, the board shall notify the applicant in writing within thirty (30) days of its finding and the grounds for its findings. An applicant found unqualified may request a hearing before the board.

(3) The board may grant a temporary license to an applicant to practice veterinary medicine until the scheduled state board examination, if the applicant pays the application fee, provides sufficient evidence that he meets the qualifications for licensure, and provides evidence that he resides in the State of Mississippi. The board may grant a second temporary permit, but the board may not grant more than two (2) temporary permits to any one (1) person.

(4) A person licensed by the board shall display the license in the facility in which the licensee practices.

SOURCES: Laws, 2005, ch. 421, § 9; reenacted without change, Laws, 2008, ch. 447, § 9, eff from and after passage (approved Apr. 8, 2008.)

§ 73-39-69. State board examination.

(1) The board shall provide for at least one (1) examination for licensing, certification or registration during each calendar year and may provide for such additional examinations as are necessary. The board shall give public notice of the time and place of each examination at least one hundred twenty (120) days before the date of the examination.

(2) The preparation, administration, grading and criterion for passing examinations shall be governed by rules prescribed by the board. Examina-

tions for veterinary licensure shall be designed to test the examinee's knowledge of and proficiency in the subjects and techniques pertaining to the practice of veterinary medicine commonly taught in an accredited college of veterinary medicine. The passing score shall be determined by the testing entity. The board may adopt and use the results of a nationally recognized testing entity such as the National Board of Veterinary Medical Licensing Examiners.

(3) Any person, not licensed to practice veterinary medicine under the laws of Mississippi, shall be required to take the state board examination. This examination shall be designed to test the applicant's knowledge of the Mississippi Veterinary Practice Act and Principles of Veterinary Medical Ethics as set forth by the American Veterinary Medical Association. Notice of this examination shall be given one hundred twenty (120) days in advance, and application must be made at least thirty (30) days before the examination. The examination shall be administered annually on the second Tuesday of June. The application fee and time and location of the examination shall be determined by the board.

(4) After examination, each examinee shall be notified of the result of the examination, and the board shall issue a license signed by members of the board. Any person who fails an examination may be admitted to any subsequent examination on payment of the application fee.

SOURCES: Laws, 2005, ch. 421, § 10; reenacted without change, Laws, 2008, ch. 447, § 10, eff from and after passage (approved Apr. 8, 2008.)

Cross References — Examination of any person qualifying for licensing by endorsement, see § 73-39-71.

§ 73-39-71. Issuance of license by endorsement at discretion of board; board authorized to examine person qualifying for license by endorsement.

(1) The board may issue a license by endorsement to an applicant who furnishes satisfactory proof that he is a graduate of an accredited college of veterinary medicine or the educational equivalence. The applicant must also show that he is a person of good moral character and is licensed to practice veterinary medicine in at least one (1) state, territory or district of the United States and has practiced veterinary medicine in one or more of those states without disciplinary action by any state or federal agency for at least the three (3) years immediately before filing the application.

(2) The board may examine any person qualifying for licensing under this section.

(3) The issuance of a license by endorsement to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 2005, ch. 421, § 11; reenacted without change, Laws, 2008, ch. 447, § 11; Laws, 2013, ch. 350, § 37, eff from and after July 1, 2013.

Comparable Laws from other States — Alabama: Code of Ala. § 34-29-74.
Arkansas: A.C.A. § 17-101-303.
Florida: Fla. Stat. § 474.217.
Georgia: O.C.G.A. § 43-50-31.
Louisiana: La. R.S. § 37:1522.
North Carolina: N.C. Gen. Stat. § 90-187.3.
South Carolina: S.C. Code Ann. § 40-69-260.
Tennessee: Tenn. Code Ann. § 63-12-117.

§ 73-39-73. Veterinary faculty license.

(1) Faculty members employed at the College of Veterinary Medicine who are eligible for licensure shall obtain a Mississippi veterinary license. Faculty members not eligible for a Mississippi license may qualify for a Mississippi faculty license under one (1) of the following criterion:

(a) Graduate veterinarians who have completed an advanced degree at a college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education (AVMA-COE);

(b) Graduate veterinarians who have completed a formal residency from an AVMA-COE accredited college of veterinary medicine, or other residency approved by the AVMA;

(c) Graduate veterinarians who are board certified in a specialty recognized by the AVMA-COE; or

(d) Graduate veterinarians who are board certified by the European Board of Veterinary Specialization.

(2) Possession of a Mississippi faculty license shall enable the holder of such license to operate as a veterinarian under the auspices of the institution for which the person is licensed. Any person holding a Mississippi faculty license desiring to practice veterinary medicine outside of the authority given by the institution shall be required to meet the requirements of the board for obtaining a valid Mississippi veterinary license.

SOURCES: Laws, 2005, ch. 421, § 12; reenacted and amended, Laws, 2008, ch. 447, § 12, eff from and after passage (approved Apr. 8, 2008.)

§ 73-39-75. Expiration and renewal of licenses; renewal fee.

(1) All licenses shall expire August 1 of each year but may be renewed by registration with the board and payment of the license renewal fee. At least thirty (30) days in advance, the board shall mail an expiration notice to each licensed veterinarian and include a form for renewal.

(2) The board shall establish the continuing education requirements that must be met for license renewal.

(3) Any person may renew an expired license within five (5) years of the date of its expiration by making written application for renewal, paying the current renewal fee and a reinstatement fee of Five Hundred Dollars

($500.00), plus all delinquent renewal fees and complying with continuing education requirements.

(4) The board may waive the payment of the registration renewal fee of a licensed veterinarian during the period when he is on active duty with any branch of the armed services of the United States.

(5) Any licensed veterinarian who is sixty-five (65) years of age or older and who is employed as a veterinarian on a part-time basis only shall be exempt from payment of such renewal fee.

(6) The payment of the annual license renewal fee shall be optional for all veterinarians seventy (70) years and older.

SOURCES: Laws, 2005, ch. 421, § 13; Laws, 2007, ch. 309, § 31; reenacted and amended, Laws, 2008, ch. 447, § 13, eff from and after passage (approved Apr. 8, 2008.)

§ 73-39-77. Discipline of licensees [Paragraph (1)(t) repealed effective July 1, 2020].

(1) Upon a written complaint sworn to by any person, the board, in its sole discretion, may, after a hearing, revoke, suspend or limit for a certain time a license, impose an administrative fine not to exceed One Thousand Dollars ($1,000.00) for each separate offense, or otherwise discipline any licensed veterinarian for any of the following reasons:

(a) The employment of fraud, misrepresentation or deception in obtaining a license.

(b) The inability to practice veterinary medicine with reasonable skill and safety because of a physical or mental disability, including deterioration of mental capacity, loss of motor skills or abuse of drugs or alcohol of sufficient degree to diminish the person's ability to deliver competent patient care.

(c) The use of advertising or solicitation that is false or misleading.

(d) Conviction of the following in any federal court or in the courts of this state or any other jurisdiction, regardless of whether the sentence is deferred:

(i) Any felony;

(ii) Any crime involving cruelty, abuse or neglect of animals, including bestiality;

(iii) Any crime of moral turpitude;

(iv) Any crime involving unlawful sexual contact, child abuse, the use or threatened use of a weapon, the infliction of injury, indecent exposure, perjury, false reporting, criminal impersonation, forgery and any other crime involving a lack of truthfulness, veracity or honesty, intimidation of a victim or witness, larceny, or alcohol or drugs.

For the purposes of this paragraph, a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction.

(e) Incompetence, gross negligence or other malpractice in the practice of veterinary medicine.

(f) Aiding the unlawful practice of veterinary medicine.

(g) Fraud or dishonesty in the application or reporting of any test for disease in animals.

(h) Failure to report, as required by law, or making false or misleading report of, any contagious or infectious disease.

(i) Failure to keep accurate patient records.

(j) Dishonesty or gross negligence in the performance of food safety inspections or in the issuance of any health or inspection certificates.

(k) Failure to keep veterinary premises and equipment, including practice vehicles, in a clean and sanitary condition.

(*l*) Failure to permit the board or its agents to enter and inspect veterinary premises and equipment, including practice vehicles, as set by rules promulgated by the board.

(m) Revocation, suspension or limitation of a license to practice veterinary medicine by another state, territory or district of the United States.

(n) Loss or suspension of accreditation by any federal or state agency.

(o) Unprofessional conduct as defined in regulations adopted by the board.

(p) The dispensing, distribution, prescription or administration of any veterinary prescription drug, or the extralabel use of any drug in the absence of a veterinarian-client-patient relationship.

(q) Violations of state or federal drug laws.

(r) Violations of any order of the board.

(s) Violations of this chapter or of the rules promulgated under this chapter.

(t) Violation(s) of the provisions of Sections 41-121-1 through 41-121-9 relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2020.

(2) A certified copy of any judgment of conviction or finding of guilt by a court of competent jurisdiction or by a governmental agency, or agency authorized to issue licenses or permits, including the United States Department of Agriculture, Animal and Plant Health Inspection Service, the Mississippi Board of Animal Health and the Mississippi Board of Health, of a veterinarian or veterinary technician of any matters listed in this section shall be admissible in evidence in any hearing held by the board to discipline such veterinarian or technician and shall constitute prima facie evidence of the commission of any such act.

SOURCES: Laws, 2005, ch. 421, § 14; reenacted without change, Laws, 2008, ch. 447, § 14; Laws, 2012, ch. 409, § 15; Laws, 2016, ch. 419, § 15, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment extended the repealer for paragraph (1)(t) by substituting "July 1, 2020" for "July 1, 2016" at the end of (1)(t).

Cross References — Program of care, counseling or treatment for impaired veterinarians, see § 73-39-79.

Appeals of board decisions, see § 73-39-81.

§ 73-39-79. Program of care, counseling or treatment for impaired veterinarians.

(1) The board shall establish a program of care, counseling or treatment for impaired veterinarians.

(2) The program of care, counseling or treatment shall include a written schedule of organized treatment, care, counseling, activities or education satisfactory to the board designed for the purposes of restoring an impaired person to a condition whereby the impaired person can practice veterinary medicine with reasonable skill and safety of a sufficient degree to deliver competent patient care.

(3) All persons authorized to practice by the board shall report in good faith any veterinarian they reasonably believe to be impaired as defined in Section 73-39-53.

SOURCES: Laws, 2005, ch. 421, § 15; reenacted without change, Laws, 2008, ch. 447, § 15, eff from and after passage (approved Apr. 8, 2008.)

§ 73-39-81. Appeals.

Any person aggrieved by a decision of the board may appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the Uniform Rules of Circuit and County Court Practice governing appeals from administrative agencies. The appeal shall be made solely on the record before the board.

SOURCES: Laws, 2005, ch. 421, § 16; reenacted without change, Laws, 2008, ch. 447, § 16, eff from and after passage (approved Apr. 8, 2008.)

§ 73-39-83. Disclosure of information; privileged information; waiver of privilege.

(1) No licensed veterinarian shall disclose any information concerning the licensed veterinarian's care of a patient except on written authorization or by waiver by the licensed veterinarian's client or by court order, by subpoena, or as otherwise provided in this section.

(2) Copies of or information from veterinary records shall be provided without the owner's consent to public, animal health, animal welfare, wildlife or agriculture authorities employed by federal, state or local governmental agencies who have a legal or regulatory interest in the contents of the records for the protection of animal and public health.

(3) Any licensed veterinarian releasing information under written authorization or other waiver by the client or under court order, by subpoena, or as otherwise provided by this section shall not be liable to the client or any other person.

(4) The privilege provided by this section shall be waived to the extent that the licensed veterinarian's client or the owner of the patient places the

licensed veterinarian's care and treatment of the patient or the nature and extent of injuries to the animal at issue in any civil criminal proceeding.

SOURCES: Laws, 2005, ch. 421, § 17; reenacted without change, Laws, 2008, ch. 447, § 17, eff from and after passage (approved Apr. 8, 2008.)

§ 73-39-85. Immunity from liability for board members, witnesses testifying in proceedings authorized under this chapter, persons lodging a complaint pursuant to this chapter, and persons reporting an impaired veterinarian.

Any member of the board, any witness testifying in a proceeding or hearing authorized under this chapter, any person who lodges a complaint pursuant to this chapter and any person reporting an impaired veterinarian shall be immune from liability in any civil or criminal action brought against him for any action occurring while he was acting in his capacity as a board member, witness, complainant or reporting party, if the person was acting in good faith within the scope of his capacity.

SOURCES: Laws, 2005, ch. 421, § 18; reenacted without change, Laws, 2008, ch. 447, § 18, eff from and after passage (approved Apr. 8, 2008.)

§ 73-39-87. Immunity from liability for veterinarians reporting suspected incidents of animal cruelty.

Any veterinarian licensed in this state who reports, in good faith and in the normal course of business, a suspected incident of animal cruelty to the proper authorities shall be immune from liability in any civil or criminal action brought against the veterinarian for reporting the incident.

SOURCES: Laws, 2005, ch. 421, § 19; reenacted without change, Laws, 2008, ch. 447, § 19, eff from and after passage (approved Apr. 8, 2008.)

§ 73-39-89. Abandoned animals.

(1) Any animal placed in the custody of a licensed veterinarian for treatment, boarding or other care which is unclaimed by the client for more than ten (10) days after written notice by certified mail, return receipt requested, or United States priority mail, confirmation of receipt, is sent to the client at the client's last known address shall be deemed to be abandoned. The abandonment shall constitute the relinquishment of all rights and claims by the client to the animal. The abandoned animal may be turned over to the nearest humane society or animal shelter or otherwise disposed of or destroyed by the licensed veterinarian in a humane manner.

(2) If a licensed veterinarian follows the procedures of this section, the veterinarian is relieved of any further liability for disposal and shall not be subject to disciplinary action under this chapter.

(3) The disposal of an abandoned animal shall not relieve the client of any financial obligation incurred for treatment, boarding or other care provided by the licensed veterinarian.

SOURCES: Laws, 2005, ch. 421, § 20; reenacted without change, Laws, 2008, ch. 447, § 20, eff from and after passage (approved Apr. 8, 2008.)

§ 73-39-91. Penalties.

(1) Any person who practices veterinary medicine without a valid license or temporary permit issued by the board is guilty of a misdemeanor and, upon conviction, shall be fined an amount of not more than Five Hundred Dollars ($500.00) nor less than One Hundred Dollars ($100.00) per violation if each act of such unlawful practice constitutes a distinct and separate offense.

(2) Any person not licensed under this chapter is considered to have violated this chapter and may be subject to all the penalties provided for such violations if he:

(a) Performs any of the functions described as the practice of veterinary medicine as defined in this chapter;

(b) Represents, directly or indirectly, publicly or privately, an ability and willingness to perform any of the functions described as the practice of veterinary medicine as defined in this chapter; or

(c) Uses any title, words, abbreviation or letters in a manner or under circumstances that induces the belief that the person using them is qualified to perform any of the functions described as the practice of veterinary medicine as defined in this chapter.

(3) The board may bring an action to enjoin any person from practicing veterinary medicine without a valid license or temporary permit issued by the board. If the court finds that the person is violating or is threatening to violate this chapter, it shall enter an injunction restraining him from the unlawful acts.

(4) Notwithstanding any other provisions of this chapter, the board may take immediate action if there is an imminent threat to the health, safety or welfare of the public. The board shall find that this action is necessary for the protection of the public and necessary to effectively enforce this chapter. If the board takes immediate action under this subsection, efforts shall be made as soon as possible to proceed in accordance with a hearing under Section 73-39-81.

(5) In addition to any other penalty or remedy provided by law, the board may implement a system of cite and fine procedures for licensed and nonlicensed persons who violate the state veterinary practice act. The board may also impose a civil penalty, upon conviction, for each separate violation. This civil penalty shall be in an amount not to exceed Five Hundred Dollars ($500.00) for each violation and shall be assessed by the board in accordance with the provisions set forth in Section 73-39-81.

(6) The success or failure of an action based on any one (1) of the remedies set forth in this section shall in no way prejudice the prosecution of an action based on any other of the remedies.

SOURCES: Laws, 2005, ch. 421, § 21; reenacted without change, Laws, 2008, ch. 447, § 21, eff from and after passage (approved Apr. 8, 2008.)

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 73-39-93. Reinstatement following suspension, revocation, or limitation of license; written application.

Any person whose license is suspended, revoked or limited may be reinstated at any time, with or without an examination, by approval of the board after written application is made to the board showing cause justifying relicensing or reinstatement.

SOURCES: Laws, 2005, ch. 421, § 22; reenacted without change, Laws, 2008, ch. 447, § 22, eff from and after passage (approved Apr. 8, 2008.)

§ 73-39-95. Repealed.

Repealed by Laws of 2008, ch. 447, § 23, effective from and after passage (approved April 8, 2008).

Editor's Note — Former § 73-39-95 contained a repealer for §§ 73-39-51 through 73-39-95 effective July 1, 2008.

CHAPTER 41

Athlete Agents
[Repealed]

§§ 73-41-1 through 73-41-23. Repealed.

Repealed by Laws of 2001, ch. 536, § 19, eff from and after July 1, 2001.

§ 73-41-1. [Laws, 1988, ch. 533, § 1, eff from and after July 1, 1988.]

§ 73-41-3. [Laws, 1988, ch. 533, § 2, eff from and after July 1, 1988.]

§ 73-41-5. [Laws, 1988, ch. 533, § 3; Laws, 1997, ch. 588, § 63, eff from and after July 1, 1997.]

§ 73-41-7. [Laws, 1988, ch. 533, § 4; Laws, 1996, ch. 507, § 76, eff from and after July 1, 1996.]

§ 73-41-9. [Laws, 1988, ch. 533, § 5, eff from and after July 1, 1988.]

§ 73-41-11. [Laws, 1988, ch. 533, § 6, eff from and after July 1, 1988.]

§ 73-41-13. [Laws, 1988, ch. 533, § 7, eff from and after July 1, 1988.]

§ 73-41-15. [Laws, 1988, ch. 533, § 8, eff from and after July 1, 1988.]

§ 73-41-17. [Laws, 1988, ch. 533, § 9, eff from and after July 1, 1988.]

§ 73-41-19. [Laws, 1988, ch. 533, § 10, eff from and after July 1, 1988.]

§ 73-41-21. [Laws, 1988, ch. 533, § 11, eff from and after July 1, 1988.]

§ 73-41-23. [Laws, 1988, ch. 533, § 12, eff from and after July 1, 1988.]

Editor's Note — Former Chapter 41 contained the former provisions pertaining to athlete agents registration requirements as administered by the Secretary of State. For present provisions, see §§ 73-42-1 et seq.

Former § 73-41-1 was entitled "Definitions."

Former § 73-41-3 was entitled "Effect of non-registration."

Former § 73-41-5 was entitled "Application for registration."

Former § 73-41-7 was entitled "Refusal to issue or renew registration; hearing; appeal."

Former § 73-41-9 was entitled "Surety bond."

Former § 73-41-11 was entitled "Prohibited activities."

Former § 73-41-13 was entitled "Interviews at state institutions of higher learning."

Former § 73-41-15 was entitled "Violations; penalties."

Former § 73-41-17 was entitled "Rules to be adopted."

Former § 73-41-19 was entitled "Compliance date for registration."

Former § 73-41-21 was entitled "Attorneys acting as athlete agents; applicability of registration requirement."

Former § 73-41-23 was entitled "Liability for loss of NCAA or NAIA eligibility."

CHAPTER 42

Uniform Athlete Agents Law

Sec.
73-42-1. Short title.
73-42-3. Definitions.
73-42-5. Administration of chapter by Secretary of State; service of process; powers to investigate violations of chapter or rules adopted under chapter.
73-42-7. Athlete agents: registration required.
73-42-9. Registration as athlete agent; form; requirements; notification to Secretary of State of material change in application information.
73-42-11. Certificate of registration; issuance or denial; renewal.
73-42-13. Denial, suspension, revocation or refusal to renew registration; grounds, hearing; appeal.
73-42-15. Temporary registration.
73-42-17. Registration and renewal fee; additional fee for actual costs relating to background checks.
73-42-19. Form of contract.
73-42-21. Notice to educational institution.
73-42-23. Student-athlete's right to cancel.
73-42-25. Required records.
73-42-27. Prohibited acts.
73-42-29. Criminal penalties.
73-42-31. Civil remedies.
73-42-33. Civil penalty.
73-42-34. Cease and desist order; administrative penalty; petition for review of final order.
73-42-35. Application and construction.
73-42-37. Relation to Electronic Signatures in Global and National Commerce Act.
73-42-39. Promulgation of rules and regulations.

§ 73-42-1. Short title.

This chapter may be cited as the "Uniform Athlete Agents Act."

SOURCES: Laws, 2001, ch. 536, § 1; brought forward without change, Laws, 2011, ch. 541, § 1, eff from and after passage (approved Apr. 26, 2011.)

Comparable Laws from other States — Alabama: Code of Ala. § 8-26B-1 et seq.
Arkansas: A.C.A. § 17-16-101 et seq.
Georgia: O.C.G.A. § 43-4A-1 et seq.
North Carolina: N.C. Gen. Stat. § 78C-85 et seq.
South Carolina: S.C. Code Ann. § 59-102-10 et seq.
Tennessee: Tenn. Code Ann. § 49-7-2101 et seq.

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-3. Definitions.

In this chapter:

(a) "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract, an endorsement contract, or enrollment at any educational institution that offers an athletic scholarship to the student-athlete.

(b) "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits, induces or solicits a student-athlete to enter into an agency contract. The term does not include a spouse, parent, sibling, grandparent or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization. The term includes an individual who represents to the public that the individual is an athlete agent.

(c) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(d) "Contact" means a communication, direct or indirect, written or oral, between an athlete agent and a student-athlete, to recruit, induce or solicit the student-athlete to enter into an agency contract.

(e) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration or anything of value for the student-athlete's publicity, reputation, following, or fame obtained because of the student-athlete's athletic ability or performance.

(f) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics.

(g) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation, or any other legal or commercial entity.

(h) "Professional-sports-services contract" means an agreement under which an individual is employed or agrees to render services as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(i) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(j) "Registration" means registration as an athlete agent pursuant to this chapter.

(k) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(*l*) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, a sport for a professional sports team or in any intercollegiate sport at any educational institution. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

SOURCES: Laws, 2001, ch. 536, § 2; Laws, 2011, ch. 541, § 2, eff from and after passage (approved Apr. 26, 2011.)

Cross References — Form of agency contract, see § 73-42-19.

JUDICIAL DECISIONS

1. Student-athlete.

It was proper to fine an agent $15,000 for violating the Mississippi Athlete Agents Act because he signed several players while working as an agent, but failed to register; regardless of a student's eligibility status, the agent violated the Act by representing to the public that he was an agent while not being registered with the Mississippi Secretary of State. The penalty imposed in this case was not arbitrary and capricious because it well within the Secretary's authority and was supported by substantial evidence in the record. Howard v. Miss. Sec'y of State, 184 So. 3d 295 (Miss. Ct. App. 2015).

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-5. Administration of chapter by Secretary of State; service of process; powers to investigate violations of chapter or rules adopted under chapter.

(1) The Secretary of State shall administer this chapter.

(2) By engaging in the business of an athlete agent in this state, a nonresident individual appoints the Secretary of State as the individual's agent to accept service of process in any civil action related to the individual's business as an athlete agent in this state.

(3) The Secretary of State may:

(a) Conduct public or private investigations within or outside of this state which he considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate any provision of this chapter or a rule adopted under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter;

(b) Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as he may determine, as to all facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(c) Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a rule adopted under this chapter if he determines it is necessary or appropriate in the public interest.

(4) For the purpose of an investigation under this chapter, the Secretary of State or his designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the Secretary of State considers relevant or material to the investigation.

SOURCES: Laws, 2001, ch. 536, § 3; Laws, 2011, ch. 541, § 3, eff from and after passage (approved Apr. 26, 2011.)

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-7. Athlete agents: registration required.

(1) Except as otherwise provided in subsection (2), an individual may not act as an athlete agent in this state before being issued a certificate of registration under Section 73-42-11 or 73-42-15.

(2) Before being issued a certificate of registration, an individual may act as an athlete agent for all purposes except signing an agency contract if within seven (7) days after an initial act as an athlete agent, the individual submits an application to register as an athlete agent in this state.

(3) An agency contract resulting from conduct in violation of this section is void. The athlete agent shall return any consideration received under the contract to the individual or entity who tendered or paid the consideration.

SOURCES: Laws, 2001, ch. 536, § 4; Laws, 2011, ch. 541, § 4, eff from and after passage (approved Apr. 26, 2011.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in a statutory reference. The reference in subsection (1) to "Section 73-41-11" was changed to "Section 73-42-11." The Joint Committee ratified the correction at its June 3, 2003 meeting.

Cross References — Athlete agent and agency contract defined, see § 73-42-3.

JUDICIAL DECISIONS

1. Violation.

It was proper to fine an agent $15,000 for violating the Mississippi Athlete Agents Act because he signed several players while working as an agent, but failed to register; regardless of a student's eligibility status, the agent violated the Act by representing to the public that he was an agent while not being registered with the Mississippi Secretary of State. The penalty imposed in this case was not arbitrary and capricious because it well within the Secretary's authority and was supported by substantial evidence in the record. Howard v. Miss. Sec'y of State, 184 So. 3d 295 (Miss. Ct. App. 2015).

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-9. Registration as athlete agent; form; requirements; notification to Secretary of State of material change in application information.

(1) An applicant for registration shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. An application filed under this section is a public record. Except as otherwise provided in subsection (2), the application must be in the name of an individual, signed by the applicant under penalty of perjury and must state or contain:

(a) The name of the applicant and the address of the applicant's principal place of business;

(b) The name of the applicant's business or employer, if applicable;

(c) Any business or occupation engaged in by the applicant for the five (5) years next preceding the date of submission of the application;

(d) A description of the applicant's:

(i) Formal training as an athlete agent;

(ii) Practical experience as an athlete agent; and

(iii) Educational background relating to the applicant's activities as an athlete agent;

(e) The names and addresses of three (3) individuals not related to the applicant who are willing to serve as references;

(f) The name, sport and last known team for each individual for whom the applicant provided services as an athlete agent during the five (5) years next preceding the date of submission of the application;

(g) The names and addresses of all persons who are:

(i) With respect to the athlete agent's business if it is not a corporation, the partners, officers, associates, individuals or profit-sharers; and

(ii) With respect to a company or corporation employing the athlete agent, the officers, directors and any shareholder of the corporation or member with a five percent (5%) or greater interest;

(h) Whether the applicant or any other person named pursuant to paragraph (g) has been convicted of a crime that, if committed in this state, would be a felony or other crime involving moral turpitude, and identify the crime;

(i) Whether there has been any administrative or judicial determination that the applicant or any other person named pursuant to paragraph (g) has made a false, misleading, deceptive or fraudulent representation;

(j) Any instance in which the conduct of the applicant or any other person named pursuant to paragraph (g) resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;

(k) Any sanction, suspension or disciplinary action taken against the applicant or any other person named pursuant to paragraph (g) arising out of occupational or professional conduct;

(*l*) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the certification, registration or licensure of the applicant or any other person named pursuant to paragraph (g) as an athlete agent in any state;

(m) Any pending litigation against the applicant in the applicant's capacity as an agent;

(n) A list of all other states in which the applicant is currently licensed or registered as an athlete agent and a copy of each state's license or registration, as applicable; and

(o) Consent to submit to a criminal background check before being issued a certificate of registration. Any fees connected with the background check shall be assessed to the applicant.

(2) An individual who has submitted an application for, and received a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and a valid certificate of registration or licensure from the other state in lieu of submitting an application in the form prescribed pursuant to subsection (1), along with the information requested in paragraphs (*l*), (m), (n) and (o) of subsection (1). The Secretary of State shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(a) Was submitted in the other state within the six (6) months next preceding the submission of the application in this state and the applicant certifies the information contained in the application is current;

(b) Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

(c) Was signed by the applicant under penalty of perjury.

(3) An athlete agent must notify the Secretary of State within thirty (30) days whenever the information contained in any application for registration as an athlete agent in this state changes in a material way or is, or becomes, inaccurate or incomplete in any respect. Events requiring notice shall include, but are not limited to, the following:

(a) Change in address of the athlete agent's principal place of business;

(b) Conviction of a felony or other crime involving moral turpitude by the athlete agent;

(c) Denial, suspension, refusal to renew, or revocation of a registration or license of the athlete agent as an athlete agent in any state; or

(d) Sanction, suspension or other disciplinary action taken against the athlete agent arising out of occupational or professional conduct.

SOURCES: Laws, 2001, ch. 536, § 5; Laws, 2011, ch. 541, § 5, eff from and after passage (approved Apr. 26, 2011.)

Cross References — Making materially false, misleading deceptive or fraudulent representation in the application as grounds for refusal to issue certificate, see § 73-42-11.

Fees for initial application and for application based upon certificate or licensure issued by another state, see § 73-42-17.

Comparable Laws from other States — Alabama: Code of Ala. § 8-26B-5.

Arkansas: A.C.A. § 17-16-105.

Florida: Fla. Stat. § 468.453.

North Carolina: N.C. Gen. Stat. § 78C-89.

South Carolina: S.C. Code Ann. § 59-102-50.

Tennessee: Tenn. Code Ann. § 49-7-2105.

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-11. Certificate of registration; issuance or denial; renewal.

(1) Except as otherwise provided in subsection (3), the Secretary of State shall issue a certificate of registration to an individual who complies with Section 73-42-9(1).

(2) Except as otherwise provided in subsection (3), the Secretary of State shall issue a certificate of registration to an individual whose application has been accepted under Section 73-42-9(2).

(3) The Secretary of State may refuse to issue a certificate of registration if he determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to serve as an athlete agent. In making the determination, the Secretary of State may consider whether the applicant has:

(a) Been convicted of a crime in another state that, if committed in this state, would be a felony or other crime involving moral turpitude;

(b) Made a materially false, misleading, deceptive or fraudulent representation as an athlete agent or in the application;

(c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(d) Engaged in conduct prohibited by Section 73-42-27;

(e) Had a registration, licensure or certification as an athlete agent suspended, revoked, or denied or been refused renewal of registration, licensure or certification in any state;

(f) Engaged in conduct or failed to engage in conduct the consequence of which was that a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or

(g) Engaged in conduct that significantly adversely reflects on the applicant's trustworthiness or credibility.

(4) In making a determination under subsection (3), the Secretary of State shall consider:

(a) How recently the conduct occurred;

(b) The nature of the conduct and the context in which it occurred; and

(c) Any other relevant conduct of the applicant.

(5) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State. An application filed under this section is a public record. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(6) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (5), may file a copy of the application for renewal and a valid certificate of registration from the other state. The Secretary of State shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

(a) Was submitted in the other state within the last six (6) months and the applicant certifies the information contained in the application for renewal is current;

(b) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and

(c) Was signed by the applicant under penalty of perjury.

(7) Except as provided in Section 33-1-39, a certificate of registration or a renewal of a registration is valid for two (2) years.

SOURCES: Laws, 2001, ch. 536, § 6; Laws, 2007, ch. 309, § 32; Laws, 2011, ch. 541, § 6, eff from and after passage (approved Apr. 26, 2011.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in subsection (3)(d). The words "Section 14" were changed to "Section 73-42-27." The Joint Committee ratified the correction at its June 3, 2003 meeting.

Cross References — Suspension, revocation or refusal to renew registration, see § 73-42-13.

Issuance of temporary license while application for registration or renewal is pending, see § 73-42-15.

Registration and renewal fee, see § 73-42-17.

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-13. Denial, suspension, revocation or refusal to renew registration; grounds, hearing; appeal.

(1) After proper notice and an opportunity for a hearing, the Secretary of State may deny, suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under Section 73-42-11(3) or for a violation of any provision of this chapter.

(2)(a) The Secretary of State shall appoint at least one (1) hearing officer for the purpose of holding hearings, compiling evidence and rendering decisions under this section and Section 73-42-11. The hearing officer shall fix the date for an adjudicatory hearing and notify the athlete agent involved. The hearing shall be held at a location to be designated by the hearing officer. Unless the time period is extended by the hearing officer, the hearing shall be held not less than fifteen (15) nor more than thirty (30) days after the mailing of notice to the athlete agent involved. At the conclusion of the hearing, the hearing officer shall make a recommendation regarding the registration of the athlete agent involved. The Secretary of State shall then take appropriate action by final order.

(b) Any athlete agent whose application for registration has been denied or not renewed, or whose registration has been revoked or suspended by the Secretary of State, within thirty (30) days after the date of such final order, shall have the right of a trial de novo on appeal to the circuit court of the county of residence of the athlete agent, the student-athlete, or the educational institution that issued an athletic scholarship to the student-athlete. If the secretary's final order is supported by substantial evidence and does not violate a state or federal law, then it shall be affirmed by the circuit court. Either party shall have the right of appeal to the Supreme Court as provided by law from any decision of the circuit court. No athlete agent shall be allowed to deliver services to a student-athlete domiciled or residing in Mississippi while any such appeal is pending.

(3) In addition to the reasons specified in subsection (1) of this section, the secretary shall be authorized to suspend the registration of any person for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a registration for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a registration suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a registration suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the secretary in suspending the registration of a

person when required by Section 93-11-157 are not actions from which an appeal may be taken under this section. Any appeal of a registration suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 2001, ch. 536, § 7; Laws, 2011, ch. 541, § 7, eff from and after passage (approved Apr. 26, 2011.)

Cross References — Enforcement of support of dependents and orders for withholding, see §§ 93-11-64 et seq. and 93-11-101 et seq.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-15. Temporary registration.

The Secretary of State may issue a temporary certificate of registration while an application for registration or renewal is pending.

SOURCES: Laws, 2001, ch. 536, § 8; brought forward without change, Laws, 2011, ch. 541, § 8, eff from and after passage (approved Apr. 26, 2011.)

Editor's Note — This section was brought forward without change by Laws of 2011, ch. 541, effective from and after April 26, 2011.

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-17. Registration and renewal fee; additional fee for actual costs relating to background checks.

(1) An application for registration or renewal of registration must be accompanied by a fee in the following amount:

(a) Two Hundred Dollars ($200.00) for an initial application for registration.

(b) Two Hundred Dollars ($200.00) for an application for registration based upon a certificate of registration or licensure issued by another state.

(c) Two Hundred Dollars ($200.00) for an application for renewal of registration.

(d) Two Hundred Dollars ($200.00) for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

(2) In addition, the Secretary of State may impose a fee for the actual costs incurred by the Secretary of State's office for processing and administering one or more criminal history background checks.

SOURCES: Laws, 2001, ch. 536, § 9; Laws, 2011, ch. 541, § 9, eff from and after passage (approved Apr. 26, 2011.)

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-19. Form of contract.

(1) An agency contract must be in a record, signed by the parties.

(2) An agency contract must state or contain:

(a) The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration or anything of value that the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(b) The name of any person not listed in the application for registration or renewal who will be compensated because the student-athlete signed the agency contract;

(c) A description of any expenses that the student-athlete agrees to reimburse;

(d) A description of the services to be provided to the student-athlete;

(e) The duration of the contract; and

(f) The date of execution.

(3) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) BOTH YOU AND YOUR ATHLETE AGENT ARE REQUIRED TO TELL YOUR ATHLETIC DIRECTOR, IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO AN AGENCY CONTRACT; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THE CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(4) An agency contract that does not conform to this section is voidable by the student-athlete.

(5) The athlete agent shall give a copy of the signed agency contract to the student-athlete at the time of signing.

SOURCES: Laws, 2001, ch. 536, § 10; Laws, 2011, ch. 541, § 10, eff from and after passage (approved Apr. 26, 2011.)

Cross References — Athlete agent required to provide notice of the existence of an agency contract to the athletic director of educational institution at which student-athlete is enrolled with seventy-two hours of entering into the agency contract, see § 73-42-21.

Student-athlete's right to cancel agency contract, see § 73-42-23.

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-21. Notice to educational institution.

(1) Before an athlete agent, or his or her employee or representative, may initiate a first contact, direct or indirect, with any of the individuals listed below, with the intent or for the purpose of soliciting the student-athlete or of procuring employment from the student-athlete, the athlete agent, or his or her employee or representative, must provide the educational institution at which the student-athlete is enrolled with written notification of the planned contact with these individuals:

(a) The student-athlete;

(b) The student-athlete's spouse, parent, foster parent, guardian, sibling, aunt, uncle, grandparent, child or first cousin; or the parent, foster parent, sibling, aunt, uncle, grandparent, child or first cousin of the student-athlete's spouse; or

(c) A representative of any of the individuals enumerated in paragraphs (a) and (b) of this subsection (1).

(2) Within seventy-two (72) hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice of the

existence of the agency contract to the athletic director of the educational institution at which the student-athlete is enrolled or at which the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(3) Within seventy-two (72) hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

SOURCES: Laws, 2001, ch. 536, § 11; Laws, 2011, ch. 541, § 11, eff from and after passage (approved Apr. 26, 2011.)

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-23. Student-athlete's right to cancel.

(1) A student-athlete may cancel an agency contract by giving notice to the athlete agent of the cancellation within fourteen (14) days after the date the contract is signed.

(2) A student-athlete may not waive the right to cancel any agency contract.

(3) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

SOURCES: Laws, 2001, ch. 536, § 12; Laws, 2011, ch. 541, § 12, eff from and after passage (approved Apr. 26, 2011.)

Cross References — Form of contract, see § 73-42-19.

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-25. Required records.

(1) An athlete agent shall retain the following records for a period of five (5) years:

(a) The name and address of each individual represented by the athlete agent;

(b) Any agency contract entered into by the athlete agent; and

(c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete.

(2) Records required by subsection (1) to be retained are open to inspection by the Secretary of State during normal business hours.

SOURCES: Laws, 2001, ch. 536, § 13; brought forward without change, Laws, 2011, ch. 541, § 13, eff from and after passage (approved Apr. 26, 2011.)

Cross References — Form of contract, see § 73-42-19.

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-27. Prohibited acts.

(1) An athlete agent may not engage in any of the following activities, within this state or otherwise, with the intent to induce a student-athlete to enter into an agency contract:

(a) Give any materially false or misleading information or make a materially false promise or representation;

(b) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

(c) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(2) An athlete agent may not intentionally:

(a) Initiate contact with a student-athlete unless registered under this chapter;

(b) Refuse or willfully fail to retain or permit inspection of the records required by Section 73-42-25 or fail to provide the Secretary of State with any statements, documents, records or testimony required by the secretary under Section 73-42-5(3) and (4);

(c) Violate Section 73-42-7 by failing to register;

(d) Provide materially false or misleading information in an application for registration or renewal of registration;

(e) Predate or postdate an agency contract; or

(f) Fail to notify a student-athlete prior to the student-athlete's signing an agency contract for a particular sport that the signing by the student-athlete may make the student-athlete ineligible to participate as a student-athlete in that sport.

SOURCES: Laws, 2001, ch. 536, § 14; Laws, 2011, ch. 541, § 14, eff from and after passage (approved Apr. 26, 2011.)

Cross References — Criminal penalties, see § 73-42-29.
Civil remedies, see § 73-42-31.
Administrative penalty, see § 73-42-33.

JUDICIAL DECISIONS

1. Violation.

It was proper to fine an agent $15,000 for violating the Mississippi Athlete Agents Act because he signed several players while working as an agent, but failed to register; regardless of a student's eligibility status, the agent violated the Act by representing to the public that he was an agent while not being registered with the Mississippi Secretary of State. The penalty imposed in this case was not arbitrary and capricious because it well within the Secretary's authority and was supported by substantial evidence in the record. Howard v. Miss. Sec'y of State, 184 So. 3d 295 (Miss. Ct. App. 2015).

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-29. Criminal penalties.

The commission of any act prohibited by Section 73-42-27 by an athlete agent is a felony punishable by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment of not more than two (2) years, or both.

SOURCES: Laws, 2001, ch. 536, § 15; brought forward without change, Laws, 2011, ch. 541, § 15, eff from and after passage (approved Apr. 26, 2011.)

Cross References — Prohibited acts, see § 73-42-27.
Civil remedies, see § 73-42-31.
Administrative penalty, see § 73-42-33.

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-31. Civil remedies.

(1) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of this chapter. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

(2) Damages of an educational institution under subsection (1) include losses and expenses incurred because, as a result of the activities of an athlete agent or former student-athlete, the educational institution was injured by a violation of this chapter or was penalized, disqualified or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions.

(3) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

(4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

(5) This chapter does not restrict rights, remedies or defenses of any person under law or equity.

SOURCES: Laws, 2001, ch. 536, § 16; brought forward without change, Laws, 2011, ch. 541, § 16, eff from and after passage (approved Apr. 26, 2011.)

Cross References — Prohibited acts, see § 73-42-27.

Criminal penalties, see § 73-42-29.

Administrative penalty, see § 73-42-33.

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-33. Civil penalty.

The Secretary of State may assess a civil penalty against an athlete agent not to exceed Twenty-five Thousand Dollars ($25,000.00) for a violation of this chapter.

SOURCES: Laws, 2001, ch. 536, § 17; brought forward without change, Laws, 2011, ch. 541, § 17, eff from and after passage (approved Apr. 26, 2011.)

Cross References — Prohibited acts; § 73-42-27.

Criminal penalties, see § 73-42-29.

Civil remedies, see § 73-42-31.

JUDICIAL DECISIONS

1. Penalty proper.

It was proper to fine an agent $15,000 for violating the Mississippi Athlete Agents Act because he signed several players while working as an agent, but failed to register; regardless of a student's eligibility status, the agent violated the Act by representing to the public that he was an agent while not being registered with the Mississippi Secretary of State. The penalty imposed in this case was not arbitrary and capricious because it well within the Secretary's authority and was supported by substantial evidence in the record. Howard v. Miss. Sec'y of State, 184 So. 3d 295 (Miss. Ct. App. 2015).

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (LexisNexis).

§ 73-42-34. Cease and desist order; administrative penalty; petition for review of final order.

(1) If the Secretary of State determines that a person has engaged in or is engaging in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, or that a person has materially aided or is materially aiding in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, then the secretary may:

(a) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business, or to take other action necessary or appropriate to comply with this chapter or any rule adopted or order issued under this chapter;

(b) Issue an order imposing an administrative penalty against an athlete agent who violated any provision of this chapter or any rule adopted or order issued under this chapter; and

(c) Take any other action authorized under the provisions of this chapter.

(2) An order issued under subsection (1) of this section is effective on the date of its issuance. Upon the order's issuance, the Secretary of State shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or other administrative remedy to be imposed under subsection (1) of this section, a statement of the costs of investigation that the secretary will seek to recover, a statement of the reasons for the order, and a statement notifying the person of his or her right to a hearing under Section 73-42-13. If a person subject to the order does not request a hearing in writing within thirty (30) days of the date of the order and none is ordered by the hearing officer, then the order, including the imposition of a civil penalty or requirement for payment of the costs of investigation, shall become final as to that person by operation of law.

(3) In a final order, the secretary may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

(4) If a petition for judicial review of a final order is not filed in accordance with Section 73-42-37, or the petition is denied by the court, the secretary may file a certified copy of the final order with the clerk of a court in the jurisdiction

where enforcement will be sought. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(5) If a person does not comply with an order issued under this section, the secretary may petition a court of competent jurisdiction to enforce the order and collect administrative civil penalties and costs imposed under the final order. The court may not require the secretary to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person did not comply with the order, the court may adjudge the person in civil contempt of the order. The court may grant any relief the court determines is just and proper in the circumstances.

(6) Any person aggrieved by a final order of the secretary may obtain a review of the order in the circuit court of the county of residence of the athlete agent, the student-athlete, or the public or private college, university, community or junior college in the state that issued an athletic scholarship to the student-athlete, by filing within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside, in whole or in part. A copy of the petition shall be served upon the secretary, and the secretary shall certify and file with the court a copy of the record and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part. The findings of the secretary as to the facts, if supported by competent material and substantial evidence, are conclusive. The beginning of proceedings under this subsection does not operate as a stay of the secretary's order, unless specifically ordered by the court.

SOURCES: Laws, 2011, ch. 541, § 18, eff from and after passage (approved Apr. 26, 2011.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a statutory reference in the next-to-last sentence of (2) by substituting "Section 73-42-13" for "Section 72-42-13." The Joint Committee ratified the correction at its August 15, 2017, meeting.

JUDICIAL DECISIONS

1. Substantial evidence.

It was proper to fine an agent $15,000 for violating the Mississippi Athlete Agents Act because he signed several players while working as an agent, but failed to register; regardless of a student's eligibility status, the agent violated the Act by representing to the public that he was an agent while not being registered with the Mississippi Secretary of State. The penalty imposed in this case was not arbitrary and capricious because it well within the Secretary's authority and was supported by substantial evidence in the record. Howard v. Miss. Sec'y of State, 184 So. 3d 295 (Miss. Ct. App. 2015).

RESEARCH REFERENCES

Practice References. Sports Laws Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (Anderson Publishing).

§ 73-42-35. Application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SOURCES: Laws, 2001, ch. 536, § 18; brought forward without change, Laws, 2011, ch. 541, § 19, eff from and after passage (approved Apr. 26, 2011.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The the words "of this chapter" were deleted so that "In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter of this chapter among states that enact it." now reads as "In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it." The Joint Committee ratified the correction at its August 5, 2008 meeting.

RESEARCH REFERENCES

Practice References. Sports Law Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (Anderson Publishing).

§ 73-42-37. Relation to Electronic Signatures in Global and National Commerce Act.

The provisions of this chapter modify, limit and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 USCS Section 7001, et seq., except that those provisions do not modify, limit, or supersede Section 101(c) of that act, 15 USCS Section 7001(c), and do not authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USCS Section 7003(b).

SOURCES: Laws, 2011, ch. 541, § 20, eff from and after passage (approved Apr. 26, 2011.)

RESEARCH REFERENCES

Practice References. Sports Laws Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (Anderson Publishing).

§ 73-42-39. Promulgation of rules and regulations.

The Secretary of State may promulgate rules and regulations necessary to administer, carry out and enforce this chapter and to define terms whether or not used in this chapter, but those definitions may not be inconsistent with this chapter.

SOURCES: Laws, 2011, ch. 541, § 21, eff from and after passage (approved Apr. 26, 2011.)

RESEARCH REFERENCES

Practice References. Sports Laws Practice (LexisNexis).

Yasser, McCurdy, Gopelrud, and Weston, Sports Law: Cases and Materials, Seventh Edition (Anderson Publishing).

CHAPTER 43

State Board of Medical Licensure

Sec.

73-43-1. State board of medical licensure established.
73-43-3. Membership of board; selection; term of office; vacancies.
73-43-5. Officers; bylaws.
73-43-7. Quorum; meetings; compensation.
73-43-9. Oath of office and commission.
73-43-11. Powers and duties of board.
73-43-13. Executive officer.
73-43-14. Executive committee.
73-43-15. Repealed.
73-43-17. Venue of actions against board.

§ 73-43-1. State board of medical licensure established.

There is hereby created and established a board to be known as the state board of medical licensure.

SOURCES: Laws, 1980, ch. 458, § 1, eff from and after July 1, 1980.

Cross References — Venue of actions against board, see § 11-11-15.

Authority of board of supervisors of a county to enter into contracts for professional services with physicians licensed by State Board of Medical Licensure, see § 19-3-69.

Powers and duties of State Board of Medical Licensure with respect to licensing and regulating the practice of radiologist assistants, see § 41-58-7.

Powers and duties of the State Board of Medical Licensure with respect to examination and licensing of physicians and osteopaths, see §§ 73-25-1 et seq.

Powers and duties of State Board of Medical Licensure with respect to examination and licensing of physician assistants, see §§ 73-26-1 et seq.

Powers and duties of the State Board of Medical Licensure with respect to examination and licensing of podiatrists, see § 73-27-3 et seq.

State boards that license health care providers prohibited from promulgating or enforcing rules or regulations in discriminatory manner, see § 73-49-1.

ATTORNEY GENERAL OPINIONS

The board of medical licensure may adopt regulations which set professional standards for physicians performing utilization review activities and provide for disciplinary action for physicians found to be in violation thereof. Morgan, Aug. 18, 2006, A.G. Op. 06-0324.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 17 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 30-32 et seq.

§ 73-43-3. Membership of board; selection; term of office; vacancies.

(1) The state board of medical licensure shall consist of nine (9) physicians. Each of the physicians shall have graduated from a medical school which has been accredited by the liaison committee on medical education as sponsored by the American Medical Association and the Association of American Medical Colleges or from an osteopathic medical school which has been accredited by the Bureau of Professional Education of the American Osteopathic Association, and have at least six (6) years' experience in the practice of medicine. No more than two (2) members of the board shall be a member of the faculty of the University of Mississippi School of Medicine. No more than four (4) members of the board shall be from the same Mississippi Supreme Court district.

(2) Three (3) physicians shall be nominated to the governor for each appointive position by the Mississippi State Medical Association; and said nominations shall give due regard to geographic distribution, race and sex. The governor shall appoint from said nominations the members of the board with the advice and consent of the senate. The original appointments of the board shall be made no later than June 30, 1980, for terms to begin on July 1, 1980. The governor shall designate the initial terms of the members as follows: Three (3) members shall be appointed for a term which expires July 1, 1982, three (3) members shall be appointed for a term which expires July 1, 1984, and three (3) members shall be appointed for a term which expires July 1, 1986. Thereafter, all succeeding appointments shall be for terms of six (6) years from the expiration of the previous term. Vacancies in office shall be filled by appointment of the governor in the same manner as the appointment to the position which becomes vacant, subject to the advice and consent of the senate at the next regular session of the legislature.

SOURCES: Laws, 1980, ch. 458, § 2 subds (1) and (2); Laws, 1984, ch. 336, eff from and after July 1, 1984.

Cross References — Powers and duties of the State Board of Medical Licensure with respect to examination and licensing of physicians and osteopaths, see §§ 73-25-1 et seq.

Powers and duties of the State Board of Medical Licensure with respect to examination and licensing of physician assistants, see §§ 73-26-1 et seq.

Powers and duties of the State Board of Medical Licensure with respect to examination and licensing of podiatrists, see § 73-27-3 et seq.

ATTORNEY GENERAL OPINIONS

There is no authority for three members of the Mississippi State Board of Medical Licensure whose terms expire on June 30, 2000 to continue to serve after that date if they have not been reappointed at that time by the Governor, and no other individuals have been appointed to fill their seats. Burnett, June 12, 2000, A.G. Op. #2000-0295.

§ 73-43-5. Officers; bylaws.

The state board of medical licensure is authorized to elect from its own members a president and secretary, and to create such other offices and adopt such by-laws as may be necessary for its efficient operation.

SOURCES: Laws, 1980, ch. 458, § 2 subd (3), eff from and after passage (approved May 5, 1980).

§ 73-43-7. Quorum; meetings; compensation.

Five (5) members shall constitute a quorum, and a majority of those present shall be necessary to reject any application. All regular meetings of the board shall be held at least quarterly upon the call of the president, except the first meeting of the original appointees which shall be called by the Governor. The members of the board shall be entitled to a per diem of Forty Dollars ($40.00) for each day's service in attending meetings of the board and for conducting examinations for professional certificates, and shall receive reimbursement for necessary expenses and mileage as is authorized by law.

SOURCES: Laws, 1980, ch. 458, § 2 subd (4); Laws, 1990, ch. 389, § 1, eff from and after July 1, 1990.

Cross References — Travel expenses of state officers and employees, see § 25-3-41.

ATTORNEY GENERAL OPINIONS

The statute does not permit the payment of per diem to members of the Mississippi State Board of Medical Licensure for attending ad hoc committee meetings at a time other than the regular board meeting. Burnett, Dec. 3, 1999, A.G. Op. #99-0646.

Members of the Executive Committee may receive per diem for attending meetings thereof which are held at times other than regular board meetings. Burnett, Dec. 3, 1999, A.G. Op. #99-0646.

Persons nominated for membership on the Mississippi Board of Medical Licensure, whose names were returned by the Senate to the Governor, are no longer members of the board and may not serve in any capacity as board members. Burnett, Feb. 13, 2004, A.G. Op. 04-0063.

§ 73-43-9. Oath of office and commission.

Each member of the state board of medical licensure shall take the oath prescribed by Section 268 of the Mississippi Constitution of 1890 and file a certificate thereof in the office of the secretary of state, whereupon a commission shall be issued to him under the terms of his office.

SOURCES: Laws, 1980, ch. 458, § 2 subd (5), eff from and after passage (approved May 5, 1980).

Cross References — Filing oath of office generally, see § 25-1-11.

§ 73-43-11. Powers and duties of board.

The State Board of Medical Licensure shall have the following powers and responsibilities:

(a) Setting policies and professional standards regarding the medical practice of physicians, osteopaths, podiatrists and physician assistants practicing with physician supervision;

(b) Considering applications for licensure;

(c) Conducting examinations for licensure;

(d) Investigating alleged violations of the medical practice act;

(e) Conducting hearings on disciplinary matters involving violations of state and federal law, probation, suspension and revocation of licenses;

(f) Considering petitions for termination of probationary and suspension periods, and restoration of revoked licenses;

(g) To promulgate and publish reasonable rules and regulations necessary to enable it to discharge its functions and to enforce the provisions of law regulating the practice of medicine; however, the board shall not adopt any rule or regulation or impose any requirement regarding the licensing of physicians or osteopaths that conflicts with the prohibitions in Section 73-49-3;

(h) To enter into contracts with any other state or federal agency, or with any private person, organization or group capable of contracting, if it finds such action to be in the public interest and in the furtherance of its responsibilities;

(i) Perform the duties prescribed by Sections 73-26-1 through 73-26-5; and

(j) Perform the duties prescribed by the Interstate Medical Licensure Compact, Section 73-25-101.

SOURCES: Laws, 1980, ch. 458, § 3 subd (1); Laws, 1990, ch. 473, § 1; Laws, 2000, ch. 470, § 4; Laws, 2015, ch. 461, § 7; Laws, 2016, ch. 508, § 3, eff from and after passage (approved May 16, 2016.)

Amendment Notes — The 2016 amendment added (j), and made related changes.

Cross References — Registration of manufacturers, distributors and dispensers of controlled substances by state board of medical licensure, see § 41-29-125.

Rules of state board of medical licensure with respect to records and inventories of manufacturers, distributors and dispensers of controlled substances, see § 41-29-133.

Role of state board of medical licensure in control of drug traffic, see § 41-29-167.

Encouragement of research on misuse and abuse of controlled substances, see § 41-29-171.

Board to establish practice requirements to protect public from transmission of Hepatitis B and HIV from health care providers, see § 41-34-3.

Requirement that board establish procedures and requirements for licensees and applicants for license to disclose his or her status as carrier of Hepatitis B or HIV, see § 41-34-5.

Powers and duties of state board of medical licensure with respect to regulating use of diagnostic pharmaceutical agents by optometrists, see §§ 73-19-101 et seq.

Powers and duties of the state board of medical licensure with respect to examination and licensing of physicians and osteopaths, see §§ 73-25-1 et seq.

Powers and duties of State Board of Medical Licensure with respect to examination and licensing of physician assistants, see §§ 73-26-1 et seq.

Powers and duties of the state board of medical licensure with respect to examination and licensing of podiatrists, see § 73-27-3 et seq.

State boards that license health care providers prohibited from promulgating or enforcing rules or regulations in discriminatory manner, see § 73-49-1.

JUDICIAL DECISIONS

1. In general.

State board of medical licensure is instrumentality of state amounting to alter ego such that suit against board by state citizen is precluded by Eleventh Amendment immunity provisions; executive officer of board was protected by qualified immunity in release of information concerning plaintiff physician to hospital because physician executed release for information. Williams v. Morgan, 710 F. Supp. 1080 (S.D. Miss. 1989).

ATTORNEY GENERAL OPINIONS

Under Section 73-43-11, the authority of the Medical Consultant is that which is granted him by the Board in his contract of employment and by any rules and regulations promulgated by the Board. Bradshaw, March 15, 1996, A.G. Op. #96-0099.

RESEARCH REFERENCES

ALR. Alcoholism, narcotics addiction, or misconduct with respect to alcoholic beverages or narcotics, as ground for revocation or suspension of license to practice medicine or dentistry. 93 A.L.R.2d 1398.

Entrapment as a defense in proceedings to revoke or suspend license to practice law or medicine. 61 A.L.R.3d 357.

Discovery of hospital's internal records or communications as to qualifications or evaluations of individual physician. 81 A.L.R.3d 944.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist. 74 A.L.R.4th 969.

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 17 et seq.

CJS. 70 C.J.S., Physicians, Surgeons, and Other Health-Care Providers §§ 30-32 et seq.

§ 73-43-13. Executive officer.

The board shall appoint an Executive Director who possesses the necessary qualifications and experience to enable him to carry out the duties required by his office. The Executive Director who may be a physician, shall receive a salary set by the board, subject to the approval of the State Personnel Board, and shall serve at the will and pleasure of the board. The executive officers shall be vested with all the authority of the board when it is not in session, and he shall be subject to such rules and regulations as may be prescribed by the board.

SOURCES: Laws, 1980, ch. 458, § 3 subd (2); Laws, 1997, ch. 354, § 1, eff from and after passage (March 17, 1997).

Cross References — Issuance of temporary license by executive officer, see § 73-25-17.

JUDICIAL DECISIONS

1. In general.

State board of medical licensure is instrumentality of state amounting to alter ego such that suit against board by state citizen is precluded by Eleventh Amendment immunity provisions; executive officer of board was protected by qualified immunity in release of information concerning plaintiff physician to hospital because physician executed release for information. Williams v. Morgan, 710 F. Supp. 1080 (S.D. Miss. 1989).

§ 73-43-14. Executive committee.

The State Board of Medical Licensure may appoint an executive committee, to be composed of three (3) of its members, with a chairman to be designated by the board from the members appointed to said committee. The executive committee shall have authority to execute all the powers vested in the board, in the interim of the meetings of the board. The executive committee shall have the authority to conduct licensure hearings pursuant to Section 73-25-27, provided that the power to revoke shall be subject to approval of the board. Any person aggrieved by a decision of the executive committee regarding licensure may appeal to the board. Any person aggrieved by an action of the board regarding licensure may appeal to the Chancery Court of the First Judicial District of Hinds County. Any action of the executive committee shall be legal and binding until modified or annulled by the board, and all pains and penalties prescribed for violating the rules of the board shall apply to any violation of rules and regulations that may be prescribed by the executive committee. Any two (2) members of the executive committee shall be a quorum for the transaction of business.

All official meetings of the executive committee, as to time and place, shall be held pursuant to a call of the president of the board.

Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SOURCES: Laws, 1982, ch. 494, § 15; Laws, 1996, ch. 507, § 77, eff from and after July 1, 1996.

§ 73-43-15. Repealed.

Repealed by Laws of 1984, ch. 358, eff from and after July 1, 1984.
[Laws, 1980, ch. 458, § 3(3)]

Editor's Note — Former § 73-43-15 required the state board of health to provide administrative and fiscal support for the state board of medical licensure.

§ 73-43-17. Venue of actions against board.

Unless otherwise provided for by law, the venue of actions against the state board of medical licensure wherein said board is a defendant shall be the first judicial district of Hinds County, Mississippi.

SOURCES: Laws, 1981, ch. 502, § 17, eff from and after July 1, 1981.

Cross References — Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

CHAPTER 45

Information to Be Included in Prescriptions

SEC.
73-45-1. Health care professionals to provide prescriptions containing all necessary information to allow prescription provider to dispense drug or medical device to consumer.

§ 73-45-1. Health care professionals to provide prescriptions containing all necessary information to allow prescription provider to dispense drug or medical device to consumer.

Health care professionals licensed by an agency of this state and whose practice encompasses the prescribing and dispensing of drugs or medical devices shall automatically provide the patient with a prescription containing all of the necessary information to allow any prescription provider to dispense the drug or medical device to the consumer. Upon the request of another health care professional or prescription provider to confirm prescription information for a specified individual, the prescribing health care professional shall immediately confirm all necessary information to enable the person requesting verification to accurately dispense the drug or medical device. Confirmation may be requested or confirmed in any form, including electronically. If confirmation of the verification request for the drug or medical device is not received within one (1) hour following the request, all information contained in the request, including the fact that the prescription has not expired, shall be presumed accurate, and the provider shall be authorized to dispense pursuant to the prescription. If no expiration date is included on the prescription, the prescription shall expire two (2) years after the date of issue. Health care professionals who dispense prescription medical devices shall prescribe brands that are readily and directly available to all channels of distribution, and shall post a notice in the location where payment for services is made informing patients as follows: “You have a right to receive a copy of your prescription. You also have a right to have your prescription filled wherever you choose.”

SOURCES: Laws, 2002, ch. 620, § 14, eff from and after July 1, 2002.

RESEARCH REFERENCES

Practice References. Drugs in Litigation: Damage Awards Involving Prescription and Nonprescription Drugs (LexisNexis).

Drug Product Liability (Matthew Bender).

CHAPTER 47

Occupational Board Compliance Act of 2017

Sec.
73-47-1. Short title.
73-47-3. Legislative intent.
73-47-5. Definitions.
73-47-7. Declaration of policy.
73-47-9. Occupational Licensing Review Commission created; composition; responsibilities; submission of proposed occupational regulations to commission.
73-47-11. Application of chapter.

§ 73-47-1. Short title.

This chapter shall be known and may be cited as the "Occupational Board Compliance Act of 2017."

SOURCES: Laws, 2017, ch. 415, § 1, eff from and after July 1, 2017.

§ 73-47-3. Legislative intent.

By establishing and executing the policies provided in this chapter, the State of Mississippi intends to ensure that occupational licensing boards and board members shall avoid liability under federal antitrust laws.

SOURCES: Laws, 2017, ch. 415, § 2, eff from and after July 1, 2017.

§ 73-47-5. Definitions.

As used in this chapter, the following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Active market participant" means an individual who is:

(i) Licensed by an occupational licensing board;

(ii) Provides any service subject to the regulatory authority of an occupational licensing board; or

(iii) Is subject to the jurisdiction of an occupational licensing board;

(b) "Active supervision" means the Occupational Licensing Review Commission shall:

(i) Review the substance of an occupational regulation proposed by any occupational licensing board; and

(ii) Approve, disapprove, disapprove with suggested amendment, or allow the occupational licensing board to withdraw for revision such occupational regulation to ensure compliance with state policy;

(c) "Commission" means the Occupational Licensing Review Commission created in Section 73-47-9;

(d) "State policy" means the policy provided in Section 73-47-7;

(e) "Occupational licensing board" means any state executive branch board, commission, department or other agency that is:

(i) Established for the primary purpose of regulating the entry of persons into, or regulating the conduct of persons within, a particular profession or occupation;

(ii) Authorized to issue and revoke occupational licenses; and

(iii) Controlled by active market participants.

(f) "Occupational regulation" means a rule, regulation, restraint, practice or policy that allows an individual to use an occupational title or work in a lawful occupation. "Occupational regulation" includes registrations, certifications and occupational licenses, and does not include a business license, facility license, building permit or zoning and land use regulation except to the extent those state laws regulate an individual's personal qualifications to perform a lawful occupation;

(g) "Personal qualifications" means the criteria related to an individual's personal background and characteristics, including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral standing, criminal history and completion of continuing education;

(h) "Registration" means a requirement to give notice to the government that may include the individual's name and address, the individual's agent for service of process, the location of the activity to be performed, and a description of the service the individual provides. "Registration" does not include personal qualifications, but may require a bond or insurance. Upon the government's receipt of notice, the individual may use "registered" as a designated title. A nonregistered individual may not perform the occupation for compensation or use "registered" as a designated title. Registration is not transferable;

(i) "Certifications" mean a voluntary program in which a private organization or the state grants nontransferable recognition to an individual who meets personal qualifications established by the private organization or the state. Upon approval, the individual may use "certified" as a designated title. A noncertified individual may also perform the occupation for compensation but may not use the title "certified";

(j) "Occupational license" means a nontransferable authorization in law for an individual to exclusively perform a lawful occupation for compensation based on meeting certain personal qualifications. In an occupation for which a license is required, it is illegal for an individual who does not possess a valid occupational license to perform the occupation for compensation;

(k) "Least restrictive regulation" means, from least to most restrictive:

(i) Market competition;

(ii) Third-party or consumer-created ratings and reviews;

(iii) Private certification;

(iv) Specific private civil cause of action to remedy consumer harm under a deceptive trade practice act;

(v) Regulation of the process of providing the specific goods or services to consumers;

(vi) Inspection;

(vii) Bonding or insurance;

(viii) Registration;

(ix) Government certification; and

(x) Occupational license.

SOURCES: Laws, 2017, ch. 415, § 3, eff from and after July 1, 2017.

§ 73-47-7. Declaration of policy.

For occupational regulations promulgated by occupational licensing boards, it is the policy of the State of Mississippi to:

(a) Increase economic opportunities for all of its citizens by promoting competition and thereby encouraging innovation and job growth; and

(b) Use the least restrictive regulation necessary to protect consumers from present, significant and substantiated harms that threaten public health and safety.

SOURCES: Laws, 2017, ch. 415, § 4, eff from and after July 1, 2017.

§ 73-47-9. Occupational Licensing Review Commission created; composition; responsibilities; submission of proposed occupational regulations to commission.

(1) There is hereby created the Occupational Licensing Review Commission which shall be composed of the Governor, the Secretary of State and the Attorney General, or his or her respective designee. The Governor shall be the Chairman of the commission and the Secretary of State shall be the Secretary. The commission shall meet quarterly and at such other times as meetings may be called by the chair. A majority of the members shall constitute a quorum at any meeting. Any final action taken by the commission shall require the affirmative vote of a majority of the members. The Office of the Governor shall provide such support of the commission necessary to accomplish the purposes of this chapter, including, but not limited to, research and clerical assistance. Any department, division, board, bureau, commission or agency of the state shall provide, at the request of the chair of the commission, such assistance and data as will enable the commission to carry out its duties.

(2) The commission shall be responsible for the active supervision of state executive branch occupational licensing boards controlled by active market participants to ensure compliance with state policy in the adoption of an occupational regulation promulgated by an occupational licensing board. The active supervision required under this chapter shall not extend to individual disciplinary actions taken or imposed by an occupational licensing board as to any active market participant subject to the jurisdiction of the occupational licensing board.

(3) An occupational licensing board must submit any proposed occupational regulation to the commission before the occupational licensing board may file the occupational regulation in the Office of the Secretary of State if the occupational regulation is required to be filed in the Office of the Secretary of State by Chapter 43, Title 25, Mississippi Code of 1972, (Mississippi Administrative Procedures Law), or before the occupational regulation becomes effective if filing is not required.

(4) The commission shall issue resolutions necessary to effectuate the provisions of this chapter, including the process, procedures and timelines that will govern any submission filed in accordance with the chapter. Nothing in this chapter shall be interpreted to subject the commission to any of the administrative procedures of Chapter 43, Title 25, Mississippi Code of 1972, (Mississippi Administrative Procedures Law).

SOURCES: Laws, 2017, ch. 415, § 5, eff from and after July 1, 2017.

§ 73-47-11. Application of chapter.

This chapter shall not apply to occupational licensing boards that are not controlled by active market participants.

SOURCES: Laws, 2017, ch. 415, § 6, eff from and after July 1, 2017.

CHAPTER 49

Health Care Provider Licensing Boards

Sec.
73-49-1. State boards that license health care providers prohibited from promulgating or enforcing rules or regulations in a manner that discriminates among licensees.
73-49-3. Conditioning of licensing of certain health care providers upon provider's participation in public or private health insurance plans, public health care systems, public service initiatives or emergency room coverage prohibited.

§ 73-49-1. State boards that license health care providers prohibited from promulgating or enforcing rules or regulations in a manner that discriminates among licensees.

No state board or agency that licenses health care providers shall promulgate or enforce any rule or regulation affecting the practice of its licensees that does not apply equally to the practice of all of its licensees. This section applies to all rules and regulations promulgated and implemented by those boards or agencies both before and after July 1, 2000.

SOURCES: Laws, 2000, ch. 560, § 20, eff from and after July 1, 2000.

Cross References — State Board of Medical Licensure, see §§ 73-43-1 et seq.

RESEARCH REFERENCES

Am Jur. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers §§ 17 et seq.

§ 73-49-3. Conditioning of licensing of certain health care providers upon provider's participation in public or private health insurance plans, public health care systems, public service initiatives or emergency room coverage prohibited.

(1) This section is applicable to licensed physicians, osteopaths, dentists, optometrists, chiropractors, advanced practice registered nurses and physician assistants.

(2) Licensure of providers named in subsection (1) of this section in this state shall not be conditioned upon or related to participation by the provider in any public or private insurance plan, public health care system, public service initiative, or emergency room coverage.

(3) Licensure of providers named in subsection (1) of this section in this state shall not be conditioned upon or related to their compliance with the "meaningful use" of electronic health records as set forth in CFR 5 Part 170.

SOURCES: Laws, 2015, ch. 461, § 1, eff from and after July 1, 2015.

CHAPTER 50

Licensing, Certifying or Registering Military-trained Individuals or Spouses to Lawfully Practice Occupation

Sec.
73-50-1. Issuance of license, certificate or registration by occupational licensing board to military-trained or military spouse applicants to lawfully practice occupation in Mississippi under certain circumstances; temporary practice permit.

§ 73-50-1. Issuance of license, certificate or registration by occupational licensing board to military-trained or military spouse applicants to lawfully practice occupation in Mississippi under certain circumstances; temporary practice permit.

(1) As used in this section, the term:

(a) "License" means any license (other than a privilege license), certificate or other evidence of qualification that an individual is required to obtain before he or she may engage in or represent himself or herself to be a member of a particular profession or occupation.

(b) "Occupational licensing board" means any state board, commission, department or other agency in Mississippi that is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within, a particular profession or occupation, and which is authorized to issue licenses. For the purposes of this section, the State Department of Education shall be considered an occupational licensing board when issuing teacher licenses under Section 37-3-2.

(2) Notwithstanding any other provision of law, an occupational licensing board shall issue a license, certification or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in Mississippi if, upon application to an occupational licensing board, the applicant satisfies the following conditions:

(a) Has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification or registration of the occupational licensing board from which the applicant is seeking licensure, certification or registration in this state: completed a military program of training, completed testing or equivalent training and experience as determined by the board, and performed in the occupational specialty.

(b) Has engaged in the active practice of the occupation for which the person is seeking a license, certification or permit from the occupational licensing board in this state for at least two (2) of the five (5) years preceding the date of the application under this section.

(c) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension or revocation of a license to practice that occupation in this state at the time the act was committed.

(d) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification or registration in this state.

(3) Notwithstanding any other provision of law, an occupational licensing board shall issue a license, certification or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in Mississippi if, upon application to an occupational licensing board, the military spouse satisfies the following conditions:

(a) Holds a current license, certification or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification or registration are substantially equivalent to or exceed the requirements for licensure, certification or registration of the occupational licensing board for which the applicant is seeking licensure, certification or registration in this state.

(b) Can demonstrate competency in the occupation through methods as determined by the board, such as having completed continuing education units or having had recent experience for at least two (2) of the five (5) years preceding the date of the application under this section.

(c) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension or revocation of a license to practice that occupation in this state at the time the act was committed.

(d) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification or permit.

(e) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification or registration in this state.

(4) All relevant experience of a military service member in the discharge of official duties or, for a military spouse, all relevant experience, including full-time and part-time experience, regardless of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under subsection (2) or (3) of this section.

(5) A nonresident licensed, certified or registered under this section shall be entitled to the same rights and subject to the same obligations as required of a resident licensed, certified or registered by an occupational licensing board in this state.

(6) An occupational licensing board may issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified or registered in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure under subsection (2) or (3) of this section if that jurisdiction has licensure, certification or registration standards substantially equivalent to the standards for licensure, certification or registration of an occupational licensing board in this state. The military-trained applicant or military spouse may practice under the temporary permit until a license, certification or registration is granted or until a notice to deny a license, certification or registration is issued in accordance with rules adopted by the occupational licensing board.

(7) An occupational licensing board may adopt rules necessary to implement this section.

(8) Nothing in this section shall be construed to prohibit a military-trained applicant or military spouse from proceeding under the existing licensure, certification or registration requirements established by an occupational licensing board in this state.

(9) Nothing in this section shall be construed to apply to the practice of law as regulated under Section 73-3-1 et seq.

SOURCES: Laws, 2013, ch. 350, § 1, eff from and after July 1, 2013.

Editor's Note — Laws of 2013, ch. 350, § 2 provides:

"SECTION 2. Within one (1) year from the effective date of this act [July 1, 2013], each occupational licensing board regulating an occupation in this state shall implement the requirements of Section 1 of this act [Section 73-50-1]."

Cross References — The issuance of a social worker, master's social worker, or certified social worker license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of this section, see § 73-53-13.

The issuance of a marriage and family therapist license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of this section, see § 73-54-23.

The issuance of a license to practice acupuncture by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of this section, see § 73-71-21.

CHAPTER 51

Unlicensed Practice of Profession

Sec.	
73-51-1.	Injunction to prohibit unlicensed practice of profession.
73-51-3.	Filing, hearing and determination of action for injunction.
73-51-5.	Effect of chapter.

§ 73-51-1. Injunction to prohibit unlicensed practice of profession.

(1) An action for an injunction may be brought and maintained in the name of any state board authorized to hold examinations and grant licenses to practice any profession to enjoin and prohibit any person from the practice of any profession required to be licensed by said board, when such person is practicing said profession and has not been granted a license therefor.

(2) Notwithstanding the provisions of subsection (1) of this section, the board of bar admissions shall not be authorized to bring or maintain actions to enjoin or prohibit any person from engaging in the unauthorized practice of law, and all complaints and notices which the board of bar admissions may receive concerning the unauthorized practice of law shall be immediately delivered to the board of commissioners of the Mississippi State Bar, or its executive director, and such board is hereby authorized to bring and maintain all such actions to enjoin and prohibit the unauthorized practice of law without the necessity of proving irreparable injury or establishing that there is no adequate remedy at law. The provisions of this subsection shall not be construed to affect any actions or proceedings commenced prior to July 1, 1983.

SOURCES: Codes, 1942, § 8923-51; Laws, 1946, ch. 431, §§ 1-3; Laws, 1983, ch. 457, § 16, eff from and after July 1, 1983.

Cross References — Injunction against unlicensed hospital, see § 41-9-35.

Practicing as architect without having certificate, see § 73-1-25.

Practicing as attorney without license, see § 73-3-55.

Practicing as barber without certificate of registration, see § 73-5-9.

Conduct of beauty salon or school of cosmetology, or practicing hairdressing or cosmetology without certificate of registration, see § 73-7-9.

Criminal offense of practicing dentistry or dental hygiene illegally, see § 73-9-57.

Practicing engineering without being registered, see § 73-13-39.

Practicing land surveying without being registered, see § 73-13-95.

Practicing nursing without being licensed, see § 73-15-33.

Acting as nursing home administrator without license, see § 73-17-3.

Practicing as optometrist without having certificate, see § 73-19-3.

Practicing as podiatrist without license, see § 73-27-15.

Practicing as polygraph examiner without license, see § 73-29-11.

Practicing as psychologist without license, see § 73-31-23.

Practicing as public accountant without certificate, see § 73-33-13.

Practicing as real estate broker or salesman without license, see § 73-35-1.

Practicing as veterinarian without license, see § 73-39-59.

Authority of department to bring action under this chapter for injunction against person in business of tattooing without being registered, see § 73-61-1.

CHAPTER 52

Licensure Records

Sec.
73-52-1. Certain licensure application and examination records to be exempt from public access requirements.

§ 73-52-1. Certain licensure application and examination records to be exempt from public access requirements.

(1) Applications for licensure in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, except that which may be released to the person who made the application or with the prior written consent of the person who made the application, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(2) Test questions in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, that are to be used in future license examinations, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(3) Recommendations in the possession of any state board which is authorized to hold examinations and grant licenses or certificates to practice any profession, respecting any application for a professional license or certificate, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

SOURCES: Laws, 1983, ch. 424, § 21; Laws, 1990, ch. 409, § 1, eff from and after July 1, 1990.

Editor's Note — "The Mississippi Public Records Act of 1983", referred to in this section, is Laws, 1983, ch. 424, §§ 1-9, which appears as §§ 25-61-1 et seq.

Cross References — Applicability of this section to the disclosure of any and all information board of medical licensure has concerning physician to hospitals, see § 73-25-28.

CHAPTER 53

Licensing and Regulation of Social Workers

Sec.

73-53-1. Legislative declarations and intent.
73-53-3. Definitions [Repealed effective July 1, 2018].
73-53-5. Construction and effect of chapter.
73-53-7. Licensure as prerequisite to performance of services and use of certain titles or letters; grandfathering provisions; penalties for violating provisions of chapter.
73-53-8. Creation of Board of Examiners for Social Workers and Marriage and Family Therapists; composition of board; powers and duties of board [Repealed effective July 1, 2018].
73-53-9. Repealed.
73-53-10. Fiscal support of board [Repealed effective July 1, 2018].
73-53-11. Powers and duties of board [Repealed effective July 1, 2018].
73-53-13. Licensure prerequisites [Repealed effective July 1, 2018].
73-53-15. Licensure; application; license fees and renewal; temporary license.
73-53-17. Standards of conduct.
73-53-19. Complaints against licensee.
73-53-21. Request for hearing following denial of license; disciplinary proceedings, notice and hearing.
73-53-23. Disciplinary sanctions; advisory letter; assessment for investigation and prosecution costs.
73-53-25. Appeals from disciplinary decisions.
73-53-27. Taking testimony; record of disciplinary proceedings; surrender of suspended or revoked license.
73-53-29. Confidentiality and privileged information obtained during consultation; exceptions.
73-53-31. Licensed certified/clinical social worker authorized to perform services that are within the lawful scope of the practice of marriage and family therapy under certain circumstances.

§ 73-53-1. Legislative declarations and intent.

It is declared to be the policy of the State of Mississippi that the profession of social work affects the public health, safety and welfare and requires appropriate regulation and control in the public interest. It is the intent of this chapter to protect the people of Mississippi by promoting high standards of professional performance for those engaged in the profession of social work by regulating the title and by setting standards of qualification, education, training and experience for those who engage, or seek to engage, in the practice of social work.

SOURCES: Laws, 1987, ch. 421, § 1; Laws, 2011, ch. 462, § 1, eff from and after July 1, 2011.

ATTORNEY GENERAL OPINIONS

State law does not require that only licensed social workers perform investigations of neglect and abuse. Alfonso, Jan. 7, 2004, A.G. Op. 03-0586.

RESEARCH REFERENCES

ALR. Social worker malpractice. 58 A.L.R.4th 977.

§ 73-53-3. Definitions [Repealed effective July 1, 2018].

As used in this chapter:

(a) "Board" means the Board of Examiners for Social Workers and Marriage and Family Therapists created under Section 73-53-8.

(b) "Social work practice" means the professional activity directed at enhancing, protecting or restoring people's capacity for social functioning, whether impaired by physical, environmental or emotional factors.

(c) "Master's social work practice" means the application of social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. Master's social work practice includes the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, counseling, supervision, consultation, education, research, advocacy, community organization and the development, implementation, and administration of policies, programs and activities. Under supervision as provided in this chapter, the practice of master's social work may include the practices reserved to clinical social workers.

(d) "Macro social work practice" focuses on changing larger systems, such as communities and organizations. It encompasses a broad spectrum of practice, including planning, program development, community organizing, policy analysis, legislative advocacy, program evaluation, task-oriented group work, community education, and human services management.

(e) "Clinical social work practice" means the application of social work methods, knowledge, theory, and ethics in the application of specialized clinical knowledge and advanced clinical skill in areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions, and addictions. This involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of therapy services to those persons. Licensed clinical social workers may provide evaluations consistent with the scope of their education, training and experience, which shall occur within the context of a therapeutic relationship.

(f) "Clinical supervision" means an interactional professional relationship between a supervisor and a social worker that provides evaluation and direction over the supervisee's practice of clinical social work and promotes continued development of the social worker's knowledge, skills, and abilities to engage in the practice of clinical social work in an ethical and competent manner. "Approved clinical supervisor" means a licensed clinical social worker who has met the qualifications to be a clinical supervisor as determined by the board.

(g) “Supervision” means the professional relationship between a supervisor and a social worker that provides evaluation and direction over the services provided by the social worker and promotes continued development of the social worker’s knowledge, skills and abilities to provide social work services in an ethical and competent manner.

(h) “Examination(s)” means that test or exam which is endorsed and prescribed by the Association of Social Work Boards.

(i) “ASWB” means Association of Social Work Boards.

(j) “Advertise” means, but is not limited to, issuing or causing to be distributed any card, sign or device to any person; causing, permitting or allowing any sign or marking on or in any building; broadcasting by radio, television, or the Internet; or advertising by any other means designed to secure public attention.

(k) “Use a title or description of” means to hold oneself out to the public as having a particular status by means of stating it on signs, mailboxes, address plates, stationery, announcements, calling cards, the Internet or other instruments of professional identification.

(*l*) “Person” means any individual, firm, corporation, partnership, organization or body politic.

(m) “Continuing education” means education and training that are oriented to maintain, improve or enhance social work practice knowledge and skills at the post-baccalaureate level. “Continuing education hour” means a sixty-minute clock hour of instruction, not including breaks or meals.

SOURCES: Laws, 1987, ch. 421, § 2; Laws, 1997, ch. 516, § 23; reenacted without change, Laws, 1999, ch. 438, § 1; reenacted without change, Laws, 2001, ch. 421, § 1; reenacted and amended, Laws, 2011, ch. 462, § 2; reenacted without change, Laws, 2014, ch. 395, § 1, eff from and after July 1, 2014.

Editor’s Note — For repeal date of this section, see § 73-54-41.

Cross References — Injunctions generally, see §§ 11-13-1 et seq.

Insurance policy covering mental, nervous or emotional disorders to reimburse for services rendered by duly licensed clinical social worker, see § 83-41-211.

§ 73-53-5. Construction and effect of chapter.

(1) No provision in this chapter shall be construed to prevent individuals licensed or certified by this state, whose activities overlap with the practice of social work, from carrying out the functions covered by their respective licenses or certificates, or to prevent ministers or individuals engaged in professional counseling who have recognized professional degrees in counseling, guidance or a related counseling field, whose activities overlap with the practice of social work, from carrying out the functions for which they have been trained, provided that such ministers or individuals shall not hold themselves out to the public by any title set out in this chapter.

(2) No provision in this chapter shall be construed to apply to or in any way interfere with any office, officer, agency or employee of the United States

of America, while such office, officer, agency or employee is engaging in the performance of official duties within the course and scope of such employment or duties.

(3) No provision of this chapter shall be construed to apply to or in any way interfere with an individual who performs services described by this chapter solely for the benefit of a member of that individual's family without compensation.

(4) No provision of this chapter shall be construed to apply to or in any way interfere with the activities and services of a student while pursuing a course of professional education qualifying as education under this chapter if these activities or services constitute a part of such student's supervised course of study and such activities are supervised by a licensee under this chapter.

SOURCES: Laws, 1987, ch. 421, § 3; Laws, 1993, ch. 498, § 1; Laws, 2011, ch. 462, § 3, eff from and after July 1, 2011.

§ 73-53-7. Licensure as prerequisite to performance of services and use of certain titles or letters; grandfathering provisions; penalties for violating provisions of chapter.

(1) A person, corporation, association or business entity shall not use, cause to be used or advertise in connection with that person's or party's name or the name or activity of the business the words, "social worker," "licensed social worker," "licensed master's social worker," "licensed certified social worker," "licensed clinical social worker," the letters "SW," "LSW," "LMSW," "LCSW" and/or any words, combination of words, abbreviations, or insignia indicating or implying directly or indirectly that social work services are provided or supplied unless those services are provided by a person holding a valid and current license issued under this chapter or under the supervision (as provided by board rule) of a licensed certified social worker with a valid and current license issued under this chapter.

A person who does not hold a valid and current license issued by the board shall not practice social work, nor advertise the performance of that practice.

A person or party who engages in or attempts to engage in the conduct described by this section is considered to be engaged in the practice of social work.

(2) Any person not licensed under this chapter on July 1, 1993, who is actively engaged in the practice of social work before July 1, 1994, as an employee of the State of Mississippi or any agency, political subdivision or municipality thereof or any community action agency or Head Start agency, and who is not eligible to be issued a license under subsection (3) of this section, shall be issued a provisional license as a licensed social worker by the board, if the person applies for such provisional license before July 1, 1994, and, at the time that the application is made, the person is so actively engaged. The license shall be issued by the board upon application therefor, the submission of proof satisfactory to the board of the applicant's employment in the practice of social work as provided in this subsection, and the payment of

the appropriate fee. Such license shall be valid for a maximum period of two (2) years, but not to extend past June 30, 1995, during which time the provisional licensee must pass the ASWB social work examination at the basic level.

(3) From and after July 1, 2001, any person violating the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be fined an amount not to exceed Five Hundred Dollars ($500.00) for his first violation, One Thousand Dollars ($1,000.00) for the second violation, and Five Thousand Dollars ($5,000.00) for the third and each subsequent violation.

SOURCES: Laws, 1987, ch. 421, § 4; Laws, 1993, ch. 498, § 2; Laws, 1994, ch. 368, § 1; Laws, 2000, ch. 565, § 2; Laws, 2001, ch. 421, § 2; Laws, 2011, ch. 462, § 4, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first paragraph of (1) by substituting "... implying directly or indirectly that social work services are provided ..." for "... implying directly or indirectly that social work services is provided...." The Joint Committee ratified the correction at its July 13, 2011, meeting.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Grandfather provision.

The appellee was entitled to a regular social work license under the grandfather provision where (1) a license was issued to her based on information, albeit false, concerning the number of years she had been engaged in social work with a county school system, (2) a complaint was brought against her alleging that she had falsified her verification of employment form, (3) the board determined that she had not intentionally and wilfully falsified her application and that the incorrect dates relating to her employment were merely accidental mistakes or typographical errors made by the personnel office in the county school system, (4) additional information regarding other employment as a social worker was presented by the appellee to show that she had more than the required amount of experience as a social worker to be allowed a license under the grandfather provision, and (5) there was no evidence that the appellee's additional employment experience did not qualify under the grandfather provision. State Dep't of Health Div. of Prof'l Licensure v. Zachary, 764 So. 2d 518 (Miss. Ct. App. 2000).

ATTORNEY GENERAL OPINIONS

Social workers employed at community mental health centers are exempt from statutory licensure requirements. Hendrix, August 12, 1992, A.G. Op. #92-0585.

Construing subsections (2) and (3) of Miss. Code Section 73-53-7 most favorably toward those persons being offered licensure and applying that construction so as to avoid illogical or unfair result, it is apparent that Miss. Code Section 73-53-7(3) allows more liberal opportunity for particular level of licensure than that provided for in Miss. Code Section 73-53-7(2); this implies that legislature intended to provide social workers who failed to qualify under subsection (2) with additional twenty-four months within which to gain social work experience; thus, any practicing social worker who made application after October 1, 1987 but before July 1, 1989 should have been considered for licensure under provisions of subsection (3), without necessity of complying with academic and examination prerequisites if board was satisfied that applicant had twenty-four months of social work experience acceptable to board and was then currently engaged in practice of social work; level of licensure would have to have been determined with reference to those levels specified in subsection (2), giving proper credit for experience without regard to academic achievement or lack thereof. Thompson, May 21, 1993, A.G. Op. #93-0248.

When Human Resource Agency is formed in accordance with Sections 17-15-1 through 17-15-11, it is subdivision of state or county or municipality thereof within meaning of Section 73-53-7. Phillips, March 2, 1994, A.G. Op. #93-0791.

Designation of private, nonprofit corporation as service delivery system or as Human Resource Agency, other than those formed in accordance with Sections 17-15-1 through 17-15-11, does not change its status as private corporation. Phillips, March 2, 1994, A.G. Op. #93-0791.

Any rules adopted by the Board of Examiners of Social Workers and Marriage and Family Therapists requiring that social worker examinations be taken and passed following the lapse of a social worker's license are not contrary to the relevant statutes. Clark, Oct. 27, 2006, A.G. Op. 06-0491.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 30.

CJS. 53 C.J.S., Licenses §§ 58, 59 et seq.

§ 73-53-8. Creation of Board of Examiners for Social Workers and Marriage and Family Therapists; composition of board; powers and duties of board [Repealed effective July 1, 2018].

(1) There is created the Board of Examiners for Social Workers and Marriage and Family Therapists to license and regulate social workers and marriage and family therapists. The board shall be composed of ten (10) members, six (6) of which shall be social workers and four (4) of which shall be marriage and family therapists.

(2) Of the social worker members of the board, two (2) must be licensed social workers, and four (4) must be licensed master social workers or licensed certified social workers or a combination thereof. The marriage and family therapist members of the board must be licensed marriage and family therapists. For at least two (2) years immediately preceding his or her appointment, each marriage and family therapist appointee must have been actively engaged as a marriage and family therapist in rendering professional services in marriage and family therapy, or in the education and training of master's, doctoral or post-doctoral students of marriage and family therapy, or in marriage and family therapy research, and during the two (2) years preceding his or her appointment, must have spent the majority of the time devoted to that activity in this state. The initial marriage and family therapist appointees shall be deemed to be and shall become licensed practicing marriage and family therapists immediately upon their appointment and qualification as members of the board. All subsequent marriage and family therapist appointees to the board must be licensed marriage and family therapists before their appointment.

(3) The Governor shall appoint six (6) members of the board, four (4) of which shall be social workers and two (2) of which shall be marriage and family therapists, and the Lieutenant Governor shall appoint four (4) members of the board, two (2) of which shall be social workers and two (2) of which shall be marriage and family therapists. Social worker members of the board shall be appointed from nominations submitted by the Mississippi Chapter of the National Association of Social Workers, and marriage and family therapist members of the board shall be appointed from nominations submitted by the Mississippi Association for Marriage and Family Therapy. All appointments shall be made with the advice and consent of the Senate.

(4) The initial appointments to the board shall be made as follows: The Governor shall appoint one (1) social worker member for a term that expires on June 30, 1999, one (1) social worker member for a term that expires on June 30, 2001, two (2) social worker members for terms that expire on June 30, 2002, one (1) marriage and family therapist member for a term that expires on June 30, 1998, and one (1) marriage and family therapist member for a term that expires on June 30, 2000. The Lieutenant Governor shall appoint one (1) social worker member for a term that expires on June 30, 1998, one (1) social worker member for a term that expires on June 30, 2000, one (1) marriage and family therapist member for a term that expires on June 30, 1999, and one (1) marriage and family therapist member of the board for a term that expires on June 30, 2001. After the expiration of the initial terms, all subsequent appointments shall be made by the original appointing authorities for terms of four (4) years from the expiration date of the previous term. Upon the expiration of his or her term of office, a board member shall continue to serve until his or her successor has been appointed and has qualified. No person may be appointed more than once to fill an unexpired term or more than two (2) consecutive full terms.

(5) Any vacancy on the board before the expiration of a term shall be filled by appointment of the original appointing authority for the remainder of the unexpired term. Appointments to fill vacancies shall be made from nominations submitted by the appropriate organization as specified in subsection (2) of this section for the position being filled.

(6) The appointing authorities shall give due regard to geographic distribution, race and sex in making all appointments to the board.

(7) The board shall select one (1) of its members to serve as chairman during the term of his or her appointment to the board. No person may serve as chairman for more than four (4) years. The board may remove any member of the board or the chairman from his or her position as chairman for (a) malfeasance in office, or (b) conviction of a felony or a crime of moral turpitude while in office, or (c) failure to attend three (3) consecutive board meetings. However, no member may be removed until after a public hearing of the charges against him or her, and at least thirty (30) days' prior written notice to the accused member of the charges against him or her and of the date fixed for such hearing. No board member shall participate in any matter before the board in which he has a pecuniary interest, personal bias or other similar conflict of interest.

(8) Board members shall receive no compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred in the performance of official board business as provided in Section 25-3-41.

(9) Four (4) social worker members and three (3) marriage and family therapist members of the board shall constitute a quorum of the board. In making its decisions and taking actions affecting the members of one (1) of the professions regulated by the board, the board shall consider the recommendations of the board members who are members of that profession. If the board is unable to have a quorum present at a regularly scheduled meeting location, the board may allow other members to participate in the meeting by telephone or other electronic means. In the case of an administrative hearing, when recusals from the process are necessary, a quorum may consist of a simple majority of six (6) members.

(10) The principal office of the board shall be in the City of Jackson, but the board may act and exercise all of its powers at any other place. The board shall adopt an official seal, which shall be judicially noticed and which shall be affixed to all licenses issued by the board.

(11) The board is authorized to employ, subject to the approval of the State Personnel Board, an executive director and such attorneys, experts and other employees as it may, from time to time, find necessary for the proper performance of its duties and for which the necessary funds are available, and to set the salary of the executive director, subject to the approval of the State Personnel Board.

(12) The board, by a majority vote, from time to time, may make such provisions as it deems appropriate to authorize the performance by any board member or members, employee or other agent of the board of any function given the board in this chapter or Sections 73-54-1 through 73-54-39.

SOURCES: Laws, 1997, ch. 516, § 21, reenacted without change, Laws, 1999, ch. 438, § 2; reenacted and amended, Laws, 2001, ch. 421, § 3; reenacted and amended, Laws, 2011, ch. 462, § 5; reenacted and amended, Laws, 2014, ch. 395, § 2, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.

Cross References — Marriage and family therapists licensure, see §§ 73-54-1 et seq.

Definitions of terms used in this section, see § 73-54-5.

§ 73-53-9. Repealed.

Repealed by Laws of 1997, ch. 516, § 26, eff from and after July 1, 1997. [Laws, 1987, ch. 421, § 5]

Editor's Note — Former § 73-53-9 created the Social Work Advisory Council.

§ 73-53-10. Fiscal support of board [Repealed effective July 1, 2018].

(1) No appropriations from the State General Fund shall be used to operate the board. The board shall be supported by fees collected for license application and renewal and/or other monies raised by the board.

(2) All fees and any other monies received by the board shall be deposited in a special fund that is created in the State Treasury and shall be used for the implementation and administration of this chapter and Sections 73-54-1 through 73-54-39 when appropriated by the Legislature for such purpose. The monies in the special fund shall be subject to all provisions of the state budget laws that are applicable to special fund agencies, and shall be disbursed by the State Treasurer only upon warrants issued by the State Fiscal Officer upon requisitions signed by a designated board member and staff member designated by the board. Any interest earned on this special fund shall be credited by the State Treasurer to the fund and shall not be paid into the State General Fund. Any unexpended monies remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund.

SOURCES: Laws, 1997, ch. 516, § 22; reenacted without change, Laws, 1999, ch. 438, § 3; reenacted without change, Laws, 2001, ch. 421, § 4; reenacted and amended, Laws, 2011, ch. 462, § 6; reenacted without change, Laws, 2014, ch. 395, § 3, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in the first sentence of (2). The reference to "Section 75-53-23" was changed to "Section 73-53-23." The Joint Committee ratified the correction at its August 5, 2008 meeting.

Editor's Note — For repeal date of this section, see § 73-54-41.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 73-53-11. Powers and duties of board [Repealed effective July 1, 2018].

(1) In addition to the duties set forth elsewhere in this chapter and in Sections 73-54-1 through 73-54-39, the board is authorized to:

(a) Review the quality and availability of social work services provided in this state and make recommendations for change to the Legislature;

(b) Recommend to the appropriate law enforcement official the bringing of civil actions to seek injunctions and other relief against individuals engaged in the unlicensed practice of social work or marriage and family therapy for violations of this chapter or Sections 73-54-1 through 73-54-39;

(c) Adopt, amend or repeal any rules or regulations necessary to carry out the purposes of this chapter and Sections 73-54-1 through 73-54-39 and the duties and responsibilities of the board;

(d) Examine and determine the qualifications and fitness of applicants for licenses to practice social work and marriage and family therapy in this state and prepare or approve and conduct all examinations of applicants for licensure;

(e) Issue, renew, deny, suspend or revoke licenses to practice social work and marriage and family therapy in this state or otherwise discipline individuals licensed by the board;

(f) Investigate alleged or suspected violations of the provisions of this chapter and Sections 73-54-1 through 73-54-39 or other laws of this state pertaining to social work and marriage and family therapy and any rules and regulations adopted by the board;

(g) Establish reasonable fees for application for examination, certificates of licensure and renewal, and other services provided by the board, not to exceed the amounts specified in Section 73-53-15;

(h) Issue subpoenas for the attendance and testimony of witnesses and the production of papers, records or other documentary evidence. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If in any proceeding before the board any witness fails or refuses to attend upon subpoena issued by the board, refuses to testify, or refuses to produce any books and papers the production of which is called for by the subpoena, the attendance of that witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state;

(i) Maintain an office and employ or retain appropriate personnel to carry out the powers and duties of the board;

(j) Adopt a code of ethics for licensed social workers that includes the current National Association of Social Workers Code of Ethics, and a code of ethics for licensed marriage and family therapists that includes the American Association for Marriage and Family Therapy Code of Ethics.

(k) Regulate the practice of social work and marriage and family therapy by interpreting and enforcing this chapter and Sections 73-54-1 through 73-54-39;

(*l*) Provide for the examination and supervision requirements for social workers and marriage and family therapists;

(m) Establish mechanisms for assessing the continuing professional competence of social workers and marriage and family therapists;

(n) Set criteria for continuing education;

(o) Establish and collect fees for sustaining the necessary operation and expenses of the board;

(p) Publish, at least annually, final disciplinary actions against licensees;

(q) Report final disciplinary action taken against a licensee to other state or federal regulatory agencies and to a national disciplinary database recognized by the board or as required by law;

(r) Share documents, materials, or other information, including confidential and privileged documents, materials, or information, received or maintained by the board with other state or federal agencies and with a national disciplinary database recognized by the board or as required by law, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(s) Participate in or conduct performance audits;

(t) Through its employees and/or representatives, enter and make inspections of any workplace or practice of a social worker or marriage and family therapist who is subject to investigation by the board in order to inspect and/or copy any record pertaining to clients or the practice of social work or marriage and family therapy under this chapter and/or Sections 73-54-1 through 73-54-39; and

(u) Conduct a criminal history records check on licensees whose licensure is subject to investigation by the board and on applicants for licensure. In order to determine the applicant's or licensee's suitability for licensing, the applicant or licensee shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant or licensee, as applicable, shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose. The department shall disseminate the results of the state check and the national check to the board for a suitability determination. The board shall be authorized to charge and collect from the applicant or licensee, in addition to all other applicable fees and costs, any amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant or licensee.

Any and all state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's or licensee's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, without the written consent of the applicant or licensee or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

(2) The board shall have such other powers as may be required to carry out the provisions of this chapter.

(3) The powers and duties enumerated in this section are granted for the purpose of enabling the board to safeguard the public health, safety and welfare against unqualified or incompetent practitioners of social work or marriage and family therapy, and are to be liberally construed to accomplish this objective.

(d) Examine and determine the qualifications and fitness of applicants for licenses to practice social work and marriage and family therapy in this state and prepare or approve and conduct all examinations of applicants for licensure;

(e) Issue, renew, deny, suspend or revoke licenses to practice social work and marriage and family therapy in this state or otherwise discipline individuals licensed by the board;

(f) Investigate alleged or suspected violations of the provisions of this chapter and Sections 73-54-1 through 73-54-39 or other laws of this state pertaining to social work and marriage and family therapy and any rules and regulations adopted by the board;

(g) Establish reasonable fees for application for examination, certificates of licensure and renewal, and other services provided by the board, not to exceed the amounts specified in Section 73-53-15;

(h) Issue subpoenas for the attendance and testimony of witnesses and the production of papers, records or other documentary evidence. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If in any proceeding before the board any witness fails or refuses to attend upon subpoena issued by the board, refuses to testify, or refuses to produce any books and papers the production of which is called for by the subpoena, the attendance of that witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state;

(i) Maintain an office and employ or retain appropriate personnel to carry out the powers and duties of the board;

(j) Adopt a code of ethics for licensed social workers that includes the current National Association of Social Workers Code of Ethics, and a code of ethics for licensed marriage and family therapists that includes the American Association for Marriage and Family Therapy Code of Ethics.

(k) Regulate the practice of social work and marriage and family therapy by interpreting and enforcing this chapter and Sections 73-54-1 through 73-54-39;

(*l*) Provide for the examination and supervision requirements for social workers and marriage and family therapists;

(m) Establish mechanisms for assessing the continuing professional competence of social workers and marriage and family therapists;

(n) Set criteria for continuing education;

(o) Establish and collect fees for sustaining the necessary operation and expenses of the board;

(p) Publish, at least annually, final disciplinary actions against licensees;

(q) Report final disciplinary action taken against a licensee to other state or federal regulatory agencies and to a national disciplinary database recognized by the board or as required by law;

(r) Share documents, materials, or other information, including confidential and privileged documents, materials, or information, received or maintained by the board with other state or federal agencies and with a national disciplinary database recognized by the board or as required by law, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(s) Participate in or conduct performance audits;

(t) Through its employees and/or representatives, enter and make inspections of any workplace or practice of a social worker or marriage and family therapist who is subject to investigation by the board in order to inspect and/or copy any record pertaining to clients or the practice of social work or marriage and family therapy under this chapter and/or Sections 73-54-1 through 73-54-39; and

(u) Conduct a criminal history records check on licensees whose licensure is subject to investigation by the board and on applicants for licensure. In order to determine the applicant's or licensee's suitability for licensing, the applicant or licensee shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant or licensee, as applicable, shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose. The department shall disseminate the results of the state check and the national check to the board for a suitability determination. The board shall be authorized to charge and collect from the applicant or licensee, in addition to all other applicable fees and costs, any amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant or licensee.

Any and all state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's or licensee's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, without the written consent of the applicant or licensee or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

(2) The board shall have such other powers as may be required to carry out the provisions of this chapter.

(3) The powers and duties enumerated in this section are granted for the purpose of enabling the board to safeguard the public health, safety and welfare against unqualified or incompetent practitioners of social work or marriage and family therapy, and are to be liberally construed to accomplish this objective.

SOURCES: Laws, 1987, ch. 421, § 6; Laws, 1997, ch. 516, § 24; reenacted without change, Laws, 1999, ch. 438, § 4; reenacted without change, Laws, 2001, ch. 421, § 5; reenacted and amended, Laws, 2011, ch. 462, § 7; reenacted without change, Laws, 2014, ch. 395, § 4, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.

Cross References — Board's powers and duties with respect to taking testimony, see § 73-53-27.

ATTORNEY GENERAL OPINIONS

Any rules adopted by the Board of Examiners of Social Workers and Marriage and Family Therapists requiring that social worker examinations be taken and passed following the lapse of a social worker's license are not contrary to the relevant statutes. Clark, Oct. 27, 2006, A.G. Op. 06-0491.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 32, 35, 37.

CJS. 53 C.J.S., Licenses §§ 58-61.

§ 73-53-13. Licensure prerequisites [Repealed effective July 1, 2018].

The board shall issue the appropriate license to applicants who meet the qualifications of this section.

(a) A license as a "licensed social worker" shall be issued to an applicant who demonstrates to the satisfaction of the board that he or she meets the following qualifications:

(i) Has a baccalaureate degree in social work from a college or university accredited by the Council on Social Work Education or Southern Association of Colleges and Schools and has satisfactorily completed the Association for Social Work Boards (ASWB) examination for this license; or

(ii) Has a comparable license or registration from another state or territory of the United States of America that imposes qualifications substantially similar to those of this chapter.

(b) A license as a "licensed master's social worker" shall be issued to an applicant who demonstrates to the satisfaction of the board that he or she meets the following qualifications:

(i) Has a doctorate or master's degree from a school of social work accredited by the Council on Social Work Education; and

(ii) Has satisfactorily completed the ASWB examination for this license; or

(iii) Has a comparable license or registration from another state or territory of the United States of America that imposes qualifications substantially similar to those of this chapter.

(c) A license as a "licensed certified social worker" shall be issued to an applicant who demonstrates to the satisfaction of the board that he or she meets the following qualifications:

(i) Is licensed under this section as a "master's social worker"; and

(ii) Has twenty-four (24) months of professional supervision and clinical or macro social work practice experience acceptable to the board, under appropriate supervision; and

(iii) Has satisfactorily completed the ASWB examination for this license; or

(iv) Has a comparable license or registration from another state or territory of the United States of America that imposes qualifications substantially similar to those of this chapter.

(d) In addition to the above qualifications, an applicant for any of the above licenses must prove to the board's satisfaction:

(i) Age of at least twenty-one (21) years, and

(ii) Good moral character, which is a continuing requirement for licensure, and

(iii) United States of America citizenship or status as a legal resident alien, and

(iv) Absence of conviction of a felony related to the practice of social work for the last ten (10) years. Conviction, as used in this subparagraph, includes a deferred conviction, deferred prosecution, deferred sentence, finding or verdict of guilt, an admission of guilty, or a plea of nolo contendere, and

(v) That the applicant has not been declared mentally incompetent by any court, and if any such decree has ever been rendered, that the decree has since been changed, and

(vi) Freedom from dependency on alcohol or drugs, and

(vii) Complete criminal history records check, including a fingerprint and an acceptable sex offender check, by appropriate governmental authorities as prescribed by the board.

(e) Only individuals licensed as "certified social workers" shall be permitted to call themselves "clinical social workers."

The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Laws, 1987, ch. 421, § 7; Laws, 1997, ch. 516, § 25; Laws, 1997, ch. 588, § 64; reenacted without change, Laws, 1999, ch. 438, § 5; reenacted without change, Laws, 2001, ch. 421, § 6; reenacted and amended, Laws, 2011, ch. 462, § 8; Laws, 2013, ch. 350, § 38; reenacted without change, Laws, 2014, ch. 395, § 5, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 25 of ch. 516, Laws of 1997, amended this section, effective July 1, 1997 (approved April 10, 1997). Section 64 of ch. 588, Laws of 1997, effective July 1, 1997 (approved April 24, 1997), also amended this section. As set out above, this section reflects the language of Section 64 of ch. 588, Laws of 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — For repeal date of this section, see § 73-54-41.

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — License fees, see § 73-53-15.

License required to surrender suspended or revoked license to board, see § 73-53-27.

Surrender of suspended or revoked license, see § 73-53-27.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 30, 35, 36.

CJS. 53 C.J.S., Licenses §§ 58, 59 et seq.

§ 73-53-15. Licensure; application; license fees and renewal; temporary license.

(1) Upon passing the examination and meeting the requirements prescribed for licensure and upon paying the initial licensure fee, an applicant shall be issued the appropriate license by the board. Except as provided in Section 33-1-39, licenses shall be renewed biennially after initial licensure in the manner prescribed by the rules and regulations of the board and upon the payment of the fees for renewal prescribed by the board. However, the fee for an initial license may be prorated in proportion to the period of time from the date of issuance.

(2) Any person who desires to be licensed as a social worker or marriage and family therapist shall apply to the board in writing on a form furnished by the board. The applicant shall provide any documents as required by the application forms provided by the board. The applicant shall pay the board at the time of filing an application fee to the board, no part of which shall be refunded. Additionally, the board shall adopt a fee schedule by rule and regulation, which shall include late fees.

(3) The initial and renewal license fees shall not exceed Two Hundred Dollars ($200.00) for a licensed social worker, Two Hundred Fifty Dollars ($250.00) for a licensed master's social worker, and Three Hundred Fifty Dollars ($350.00) for a licensed certified social worker. When increased by the board, fees may not be increased by more than ten percent (10%) of the amount of the previous year's fee.

(4) Notwithstanding subsections (1) and (2) of this section, in all instances where the board uses the services of a national testing service for preparation, administration, or grading of examinations, the applicant shall pay the required fees to the national testing service, in addition to other board fees.

(5) During a lawfully declared local, state or national disaster or emergency, the board may issue a temporary license to any otherwise qualified social worker or marriage and family therapist licensed and in good standing

in another state or territory of the United States of America and who meets any other requirements as the board may prescribe by rule and regulation.

(6) Every person to whom a license is issued under the authority of the board shall, as a condition precedent to its issuance, pay the application and any other fee(s) prescribed by the board.

SOURCES: Laws, 1987, ch. 421, § 8; Laws, 2001, ch. 421, § 7; Laws, 2007, ch. 309, § 33; Laws, 2011, ch. 462, § 9, eff from and after July 1, 2011.

Cross References — Fees received under this section to be deposited in a special fund to be used for the implementation and administration of this chapter and §§ 73-54-1 through 73-54-39, see § 73-53-10.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 55.

CJS. 53 C.J.S., Licenses §§ 64, 70-79, 101, 102.

§ 73-53-17. Standards of conduct.

(1) Individuals licensed by the board shall conduct their activities, services and practice in accordance with the laws governing their professional practice and any rules promulgated by the board. Licensees and applicants may be subject to the exercise of the sanctions enumerated in Section 73-53-23 if the board finds that a licensee or applicant has committed any of the following:

(a) Negligence in the practice or performance of professional services or activities;

(b) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public in the course of professional services or activities;

(c) Perpetrating or cooperating in fraud or material deception in obtaining or renewing a license or attempting the same;

(d) Violating the rules and regulations established by the board;

(e) Violating the National Association of Social Workers Code of Ethics or the American Association for Marriage and Family Therapy Code of Ethics;

(f) Being convicted of any crime which has a substantial relationship to the licensee's activities and services or an essential element of which is misstatement, fraud or dishonesty;

(g) Being convicted of any crime which is a felony under the laws of this state or of the United States of America;

(h) Engaging in or permitting the performance of unacceptable services personally due to the licensee's deliberate or grossly negligent act or acts or failure to act, regardless of whether actual damage or damages to the public is established, or assuming responsibility for another's work by signing documents without personal knowledge of the work as established by board rule;

(i) Continued practice although the licensee has become unfit to practice social work due to: (i) failure to keep abreast of current professional theory or practice; or (ii) physical or mental disability; the entry of an order or judgment by a court of competent jurisdiction that a licensee is in need of mental treatment or is incompetent shall constitute mental disability; or (iii) addiction or severe dependency upon alcohol or other drugs which may endanger the public by impairing the licensee's ability to practice;

(j) Continued practice although the individual failed to renew and has a lapsed license;

(k) Having disciplinary action taken against the licensee's license in another state;

(*l*) Making differential, detrimental treatment against any person because of race, color, creed, sex, religion or national origin;

(m) Engaging in lewd conduct in connection with professional services or activities;

(n) Engaging in false or misleading advertising;

(o) Contracting, assisting or permitting unlicensed persons to perform services for which a license is required under this chapter;

(p) Violation of any probation requirements placed on a licensee by the board;

(q) Revealing confidential information except as may be required by law;

(r) Failing to inform clients of the fact that the client no longer needs the services or professional assistance of the licensee;

(s) Charging excessive or unreasonable fees or engaging in unreasonable collection practices.

(2) The board may order a licensee to submit to a reasonable physical or mental examination if the licensee's physical or mental capacity to practice safely is at issue in a disciplinary proceeding.

(3) Failure to comply with a board order to submit to a physical or mental examination shall render a licensee subject to the summary suspension procedures described in Section 73-53-23.

(4) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1987, ch. 421, § 9; Laws, 1993, ch. 498, § 3; Laws, 1996, ch. 507, § 78; Laws, 2011, ch. 462, § 10, eff from and after July 1, 2011.

Cross References — Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 30, 35, 37.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 42, 44.

CJS. 53 C.J.S., Licenses §§ 73-79, 82 et seq.

§ 73-53-19. Complaints against licensee.

All complaints concerning a licensee's business or professional practice shall be received by the board. Each complaint received shall be logged, recording at a minimum the following information: (a) licensee's name; (b) name of the complaining party; (c) date of complaint; (d) brief statement of complaint; and (e) disposition.

SOURCES: Laws, 1987, ch. 421, § 10; Laws, 2011, ch. 462, § 11, eff from and after July 1, 2011.

RESEARCH REFERENCES

Am Jur. 16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41, 42, 44, 46.

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-53-21. Request for hearing following denial of license; disciplinary proceedings, notice and hearing.

(1) Any person whose application for a license is denied shall be entitled to a hearing before the board if he or she submits a written request for a hearing to the board. The board shall fix a time and place for the hearing and shall cause a written copy of the reason for denial of the license, together with a notice of the time and place fixed for the hearing to be served on the applicant requesting the hearing.

(2) Following the investigative process, the board may file formal charges against the licensee. Such formal complaint shall, at a minimum, inform the licensee of the facts which are the basis of the charge and which are specific enough to enable the licensee to defend against the charges.

(3) Each licensee whose conduct is the subject of a formal charge which seeks to impose disciplinary action against the licensee shall be served notice of the formal charge at least thirty (30) days before the date of the hearing, which hearing shall be presided over by the board or the board's designee.

(4) Service shall be considered to have been given if the notice was personally served on the licensee or applicant or if the notice was sent by certified United States mail to the licensee or applicant to the licensee's or applicant's last known address as listed of record with the board.

(5) The board or its designee shall hear evidence produced in support of the formal charges and contrary evidence produced by the licensee. At the conclusion of the hearing, the board shall issue an order.

(6) All proceedings pursuant to this section are matters of public record and shall be preserved pursuant to state law.

SOURCES: Laws, 1987, ch. 421, § 11; Laws, 2011, ch. 462, § 12, eff from and after July 1, 2011.

Cross References — Creating and preserving a record of disciplinary proceedings before the State Board of Health, see § 73-53-27.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 35.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41, 42, 44, 46, 47.

CJS. 53 C.J.S., Licenses §§ 82 et seq.

§ 73-53-23. Disciplinary sanctions; advisory letter; assessment for investigation and prosecution costs.

(1) The board may impose any of the following sanctions, singly or in combination, when it finds that a licensee or applicant has committed any offense listed in Section 73-53-17:

(a) Revocation of the license;

(b) Suspension of the license, for any period of time;

(c) Censure the licensee;

(d) Issue a letter of reprimand to the licensee;

(e) Impose a monetary penalty in an amount not to exceed Five Hundred Dollars ($500.00) for the first violation, One Thousand Dollars ($1,000.00) for the second violation, and Five Thousand Dollars ($5,000.00) for the third and each subsequent violation;

(f) Place a licensee on probationary status and require the licensee to submit to any of the following: (i) report regularly to the board upon matters which are the basis of probation; (ii) continue to renew professional education until a satisfactory degree of skill has been attained in those areas which are basis of probation; or (iii) such other reasonable requirement or restrictions as are proper;

(g) Refuse to issue or renew a license;

(h) Revoke probation which has been granted and impose any other disciplinary action in this subsection when the requirements of probation have not been fulfilled or have been violated;

(i) Restrict a license; and/or

(j) Accept a voluntary surrendering of a license based on an order of consent from the board.

(2) The board may summarily suspend a license issued by the board without a hearing simultaneously with the filing of a formal complaint and

notice for a hearing provided by this chapter and Sections 73-54-1 through 73-54-39 pending proceedings before the board. If the board suspends summarily a license under the provisions of this subsection, a hearing must begin within twenty (20) days after such suspension begins, unless continued at the request of the licensee.

(3) Disposition of any formal complaint may be made by consent order or stipulation between the board and the licensee.

(4) The board may reinstate any licensee to good standing under this chapter if the board is satisfied that the applicant's renewed practice is in the public interest. The procedure for the reinstatement of a license that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(5) The board shall seek to achieve consistency in the application of the foregoing sanctions, and significant departure from prior decisions involving similar conduct shall be explained by the board.

(6) In addition to any other power that it has, the board may issue an advisory letter to a licensee if it finds that the information received in a complaint for an investigation does not merit disciplinary action against the licensee.

(7) The board may also assess and levy upon any licensee or applicant for licensure the costs incurred or expended by the board in the investigation and prosecution of any licensure or disciplinary action, including but not limited to, the cost of process service, court reports, expert witness, investigators, and attorney fees.

SOURCES: Laws, 1987, ch. 421, § 12; Laws, 1996, ch. 507, § 79; Laws, 2011, ch. 462, § 13, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of (2) by substituting "Sections 73-54-1 through 73-54-39" for "Section 73-54-1 through 73-54-39." The Joint Committee ratified the correction at its July 13, 2011, meeting.

Cross References — Monetary penalties imposed by the board under this section are to be deposited in the State General Fund, see § 73-53-10.

Standards of conduct for social workers, see § 73-53-17.

Appeals, see § 73-53-25.

Suspensions of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-157 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 37.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency — to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

16 Am. Jur. Pl & Pr Forms (Rev), Li-

censes and Permits, Forms 41, 42.
CJS. 53 C.J.S., Licenses §§ 82 et seq., 121.

§ 73-53-25. Appeals from disciplinary decisions.

Any person aggrieved by a decision of the board shall have the right to appeal therefrom to the circuit court of the county of the residence of the aggrieved party or to the Circuit Court of the First Judicial District of Hinds County in the manner provided by law for appeals from administrative decisions. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SOURCES: Laws, 1987, ch. 421, § 13; Laws, 1996, ch. 507, § 80, eff from and after July 1, 1996.

Cross References — Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 52-54.
16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 43, 45, 48.

CJS. 53 C.J.S., Licenses §§ 60, 62, 65, 66, 82.

§ 73-53-27. Taking testimony; record of disciplinary proceedings; surrender of suspended or revoked license.

(1) The board has the power to take testimony either orally or by deposition, or both, with the same fees and mileage and in the same manner as is prescribed by law for judicial proceedings in civil cases. Any member of the board or its designee has the power to administer oaths at any hearing which the board is authorized by law to conduct.

(2) The board shall provide a stenographer to take down the testimony and preserve a record of all proceedings at the hearing of any case in which a license may be revoked, suspended, placed on probationary status, or other disciplinary action taken with regard thereto. The notice of hearing, complaint and all other documents in the nature of pleadings and written motions filed in the proceedings, the recording of testimony, the report of the board, and the orders of the board constitute the record of such proceedings. The board shall furnish a transcript of such record to any person interested in such hearing upon payment of the cost of each original transcript or for each copy.

(3) Upon the suspension or revocation of a license issued under Section 73-53-13, a licensee shall be required to surrender the license to the board, and upon failure to do so the board shall have the right to seize the same.

SOURCES: Laws, 1987, ch. 421, § 14; Laws, 2001, ch. 421, § 8; Laws, 2011, ch. 462, § 14, eff from and after July 1, 2011.

Cross References — Powers and duties of State Board of Examiners for Social Workers and Marriage and Family Therapists, generally, see § 73-53-11.

Procedures involved in conduct of disciplinary proceedings generally, see § 73-53-21.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 35, 52-54.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 46, 47.

CJS. 53 C.J.S., Licenses §§ 58, 59, 82 et seq.

§ 73-53-29. Confidentiality and privileged information obtained during consultation; exceptions.

No licensee under this chapter or an employee of a licensee may disclose any information which was acquired from clients or persons consulting with the licensee and which was provided in order to allow the licensee to render professional services, except:

(a) With the written consent of the person(s) or, in the case of death or disability, of the individual's personal representative, or person authorized to sue, or the beneficiary of an insurance policy on an individual's life, health or physical condition; or

(b) Communications that reveal the contemplation of a crime or a harmful act; or

(c) When the licensee acquires information involving a minor who was a victim or subject of a crime, the licensee may be required to testify fully in an examination, trial or other proceeding in which the commission of such a crime is a subject of inquiry; or

(d) When a person waives the privilege by bringing charges against the licensee; or

(e) When the licensee is called upon to testify in court or administrative hearings concerning matters of adoption, adult abuse, child abuse, child neglect or other matters pertaining to the welfare of clients of the licensee; or

(f) When the licensee is collaborating or consulting with professional colleagues or an administrative superior on behalf of the client.

SOURCES: Laws, 1987, ch. 421, § 15, eff from and after July 1, 1987.

RESEARCH REFERENCES

ALR. Communications to social worker as privileged. 50 A.L.R.3d 563.

Am Jur. 81 Am. Jur. 2d, Witnesses § 284.

§ 73-53-31. Licensed certified/clinical social worker authorized to perform services that are within the lawful scope of the practice of marriage and family therapy under certain circumstances.

Whenever any law, regulation or policy of the State of Mississippi or any agency, department, institution or political subdivision of the state authorizes or allows a licensed marriage and family therapist as defined in Section 73-54-5 to perform services that are within the lawful scope of practice of marriage and family therapy as defined in Section 73-54-5, those services may also be performed by a licensed certified/clinical social worker to the extent that those services are within the lawful scope of clinical social work practice.

SOURCES: Laws, 2010, ch. 341, § 2, eff from and after July 1, 2010.

Cross References — Licensed marriage and family therapist authorized to perform services that are within the lawful scope of clinical social work practice under certain circumstances, see § 73-54-43.

CHAPTER 54

Marriage and Family Therapists

Sec.

73-54-1. Title [Repealed effective July 1, 2018].
73-54-3. Declaration of policy and purpose [Repealed effective July 1, 2018].
73-54-5. Definitions [Repealed effective July 1, 2018].
73-54-7. Practicing marriage and family therapy or using certain titles without license prohibited; penalties [Repealed effective July 1, 2018].
73-54-9. Exemptions [Repealed effective July 1, 2018].
73-54-11. Powers of board [Repealed effective July 1, 2018].
73-54-13. Licensure prerequisites [Repealed effective July 1, 2018].
73-54-15. Repealed.
73-54-17. Qualification for marriage and family therapy licensure after September 1, 2000; qualification for marriage and family therapy associate licensure after September 1, 2011 [Repealed effective July 1, 2018].
73-54-19. Examination; cost of examination to be paid by applicant [Repealed effective July 1, 2018].
73-54-21. Repealed.
73-54-23. Licensure of persons holding out-of-state license or certification [Repealed effective July 1, 2018].
73-54-25. Repealed.
73-54-27. Expiration of license; renewal; inactive status [Repealed effective July 1, 2018].
73-54-29. Grounds for disciplinary sanction [Repealed effective July 1, 2018].
73-54-31. Disciplinary proceedings [Repealed effective July 1, 2018].
73-54-33. Use of expert witnesses in proceedings before the board [Repealed effective July 1, 2018].
73-54-35. Disciplinary sanctions [Repealed effective July 1, 2018].
73-54-37. Confidentiality and privileged information; exceptions [Repealed effective July 1, 2018].
73-54-39. Competency of therapist or therapy associate to testify in alimony, custody or divorce actions [Repealed effective July 1, 2018].
73-54-41. Repeal of Sections 73-54-1 through 73-54-39, 73-53-3, 73-53-8, 73-53-10, 73-53-11, and 73-53-13.
73-54-43. Licensed marriage and family therapist authorized to perform services that are within the lawful scope of clinical social work practice under certain circumstances.

§ 73-54-1. Title [Repealed effective July 1, 2018].

This chapter shall be known and may be cited as the "Marriage and Family Therapy Licensure Act of 1997."

SOURCES: Laws, 1997, ch. 516, § 1; reenacted without change, Laws, 2014, ch. 395, § 6, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.

§ 73-54-3. Declaration of policy and purpose [Repealed effective July 1, 2018].

Marriage and family therapy in the State of Mississippi is declared to be a professional practice that affects the public safety and welfare and requires appropriate regulation and control in the public interest.

It is the purpose of this chapter to establish a regulatory agency, a structure, and procedures that will ensure that the public is protected from unprofessional, improper, unauthorized and unqualified practice of marriage and family therapy. This chapter shall be liberally construed to carry out these policies and purposes.

SOURCES: Laws, 1997, ch. 516, § 2; reenacted without change, Laws, 1999, ch. 438, § 7; reenacted without change, Laws, 2001, ch. 421, § 10; reenacted without change, Laws, 2011, ch. 462, § 16; reenacted without change, Laws, 2014, ch. 395, § 7, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.

§ 73-54-5. Definitions [Repealed effective July 1, 2018].

As used in this chapter and in Section 73-53-8, unless the context clearly requires a different meaning:

(a) "Licensed marriage and family therapist" means a person to whom a license has been issued under this chapter and Section 73-53-8, which license is in force and not suspended or revoked as of the particular time in question.

(b) "Licensed marriage and family therapy associate" means a person to whom a marriage and family therapy associate license has been issued under this chapter and Section 73-53-8, which license is in force and not suspended or revoked as of the particular time in question.

(c) "Marriage and family therapy" means the rendering of professional therapy services to individuals, families or couples, singly or in groups, and involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of therapy services to those persons.

(d) "Practice of marriage and family therapy" means the rendering of professional marriage and family therapy services to individuals, couples and families, singly or in groups, whether those services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise. This involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of therapy services to those persons. Licensed marriage and family therapists may use specialized clinical knowledge and advanced clinical skill in the areas of assessment, diagnosis, and the treatment of mental, emotional, and behavioral disorders, conditions, and addictions within a marriage and family therapy treatment context. This definition shall not be construed to include psychological evaluation or testing, including administering and interpreting psychological tests, such as intellectual, neuropsychological, advanced personality, and projective instruments, or the labeling of any test, report or procedure as psychological or as a psychological evaluation. The terms "assessment" and "treatment" shall not be construed to permit the performance of any act that marriage and family therapists are not educated and trained to perform. This shall not limit licensed marriage and family therapists in the use of assessment instruments for which they were trained to evaluate individuals, couples and family members with regard to marriage and family functioning.

(e) "Advertise" means, but is not limited to, issuing or causing to be distributed any card, sign or device to any person; causing, permitting or allowing any sign or marking on or in any building; broadcasting by radio or television; or advertising on the Internet or by any other means designed to secure public attention.

(f) "Use a title or description of" means to hold oneself out to the public as having a particular status by means of stating it on signs, mailboxes, address plates, stationery, announcements, calling cards, the Internet or other instruments of professional identification.

(g) "Board" means the Board of Examiners for Social Workers and Marriage and Family Therapists created by Section 73-53-8.

(h) "Institution of higher education" means any regionally accredited institution of higher learning in the United States that offers a master's or doctoral degree; for foreign universities, this term means an institution of higher education accredited by a legal agency of that country that is satisfactory to the board.

(i) "Examination" means the test or exam endorsed or prescribed by the Association for Marital and Family Therapy Regulatory Boards.

(j) "Person" means any individual, firm, corporation, partnership, organization or body politic.

SOURCES: Laws, 1997, ch. 516, § 3; reenacted without change, Laws, 1999, ch. 438, § 8; reenacted and amended, Laws, 2001, ch. 421, § 11; reenacted and amended, Laws, 2011, ch. 462, § 17; reenacted and amended, Laws, 2014, ch. 395, § 8, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.

§ 73-54-7. Practicing marriage and family therapy or using certain titles without license prohibited; penalties [Repealed effective July 1, 2018].

A person who does not hold a valid and current license issued by the board shall not practice marriage and family therapy, nor advertise the performance of that practice. Except as specifically exempted in Section 73-54-9, beginning September 1, 1997, any person who represents himself or herself by the title or description "marital or marriage therapist," "licensed marital or marriage and family therapist," or any other name, style or description denoting that the person is a marriage and family therapist or marriage and family counselor without having first complied with the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) for each offense.

SOURCES: Laws, 1997, ch. 516, § 4; reenacted without change, Laws, 1999, ch. 438, § 9; reenacted without change, Laws, 2001, ch. 421, § 12; reenacted and amended, Laws, 2011, ch. 462, § 18; reenacted without change, Laws, 2014, ch. 395, § 9, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violations, see § 99-19-73.

§ 73-54-9. Exemptions [Repealed effective July 1, 2018].

(1) A person shall be exempt from the requirements of this chapter if the person is a marriage and family therapy intern or person preparing for the practice of marriage and family therapy under qualified supervision in a training institution or facility or supervisory arrangement recognized and approved by the board, provided he or she is designated by such titles as "marriage and family therapy intern," "family therapy intern" or others, clearly indicating such training status.

(2) Nothing in this chapter shall prevent licensed or certified members of other professional groups as defined by their board, including, but not limited to, physicians, psychologists, clinical nurse specialists, clinical social workers, licensed professional counselors, or duly ordained ministers or clergy while functioning in their ministerial capacity, from doing or advertising that they perform work of a marriage and family therapy nature consistent with the accepted standards of their respective professions.

(3) Nothing in this chapter shall be construed as permitting licensed marriage and family therapists to engage in the practice of psychology. Marriage and family therapists may provide testing consistent with the scope of their education, training and experience. Testing shall occur within the context of a therapeutic relationship.

SOURCES: Laws, 1997, ch. 516, § 5; reenacted without change, Laws, 1999, ch. 438, § 10; reenacted and amended, Laws, 2001, ch. 421, § 13; reenacted and amended, Laws, 2011, ch. 462, § 19; reenacted without change, Laws, 2014, ch. 395, § 10, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.

§ 73-54-11. Powers of board [Repealed effective July 1, 2018].

(1) The board shall administer and enforce the provisions of this chapter. The board shall from time to time adopt such rules and regulations and such amendments thereof and supplements thereto as it may deem necessary to

enable it to perform its duties under, and to carry into effect the provisions of, this chapter. Such rules and regulations shall be adopted in accordance with the Mississippi Administrative Procedures Law (Section 25-43-1 et seq.).

(2) The board shall examine and pass on the qualifications of all applicants under this chapter, and shall issue a license to each successful applicant therefor, attesting to his or her professional qualifications to be a marriage and family therapist or marriage and family therapy associate.

SOURCES: Laws, 1997, ch. 516, § 6; reenacted without change, Laws, 1999, ch. 438, § 11; reenacted without change, Laws, 2001, ch. 421, § 14; reenacted and amended, Laws, 2011, ch. 462, § 20; reenacted without change, Laws, 2014, ch. 395, § 11, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.

Pursuant to § 25-43-1.101(3), any reference in this section to § 25-43-1 et seq. shall be deemed to mean and refer to § 25-43-1.101 et seq.

Cross References — Additional duties of the Board of Examiners for Social Workers and Marriage and Family Therapists, see § 73-53-11.

ATTORNEY GENERAL OPINIONS

Any rules adopted by the Board of Examiners of Social Workers and Marriage and Family Therapists requiring that social worker examinations be taken and passed following the lapse of a social worker's license are not contrary to the relevant statutes. Clark, Oct. 27, 2006, A.G. Op. 06-0491.

§ 73-54-13. Licensure prerequisites [Repealed effective July 1, 2018].

Each person desiring to obtain a license as a marriage and family therapist or marriage and family therapy associate shall make application thereof to the board in such manner as the board prescribes and with required application fees and shall furnish evidence satisfactory to the board that he or she:

(a) Is of good moral character;

(b) Has not engaged or is not engaged in any practice or conduct which would be a ground for refusing to issue a license under Section 73-54-29 or Section 73-53-17;

(c) Is qualified for licensure pursuant to the requirements of this chapter; and

(d) Is at least twenty-one (21) years of age.

SOURCES: Laws, 1997, ch. 516, § 7; reenacted without change, Laws, 1999, ch. 438, § 12; reenacted without change, Laws, 2001, ch. 421, § 15; reenacted and amended, Laws, 2011, ch. 462, § 21; reenacted without change, Laws, 2014, ch. 395, § 12, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.

§ 73-54-15. Repealed.

Repealed by Laws of 2011, ch. 462, § 22, effective from and after July 1, 2011.

§ 73-54-15. [Laws, 1997, ch. 516, § 8; reenacted without change, Laws, 1999, ch. 438, § 13; reenacted without change, Laws, 2001, ch. 421, § 16, eff from and after June 30, 2001].

Editor's Note — Former § 73-54-15 prescribed the qualifications for marriage and family therapist license applicants on or before September 1, 2000.

§ 73-54-17. Qualification for marriage and family therapy licensure after September 1, 2000; qualification for marriage and family therapy associate licensure after September 1, 2011 [Repealed effective July 1, 2018].

(1) Any person who applies for a marriage and family therapy license after September 1, 2000, shall be issued that license by the board if he or she meets the qualifications set forth in Section 73-54-13, and submits the required application fees, and provides satisfactory evidence to the board that he or she:

(a) Meets educational and experience qualifications as follows:

(i) Holds a master's degree or doctoral degree in marriage and family therapy from an institution of higher education in a program that is accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE), or that was in COAMFTE candidacy status at the time of graduation and subsequently received COAMFTE accreditation;

(ii) Following the receipt of the first qualifying degree, has at least two (2) years of supervised experience in marriage and family therapy, or its equivalent, acceptable to the board; and

(iii) Has completed at least one hundred (100) hours of marriage and family therapy supervision following receipt of the first qualifying degree, as defined by the board; and

(b) Passes the national Examination in Marital and Family Therapy prescribed by the Association for Marital and Family Therapy Regulatory Boards; and

(c) Has been successfully cleared through a criminal history records check, including a fingerprint and an acceptable sex offender check, by appropriate governmental authorities as prescribed by the board.

(2) Any person who applies for a marriage and family therapy associate license after September 1, 2011, shall be issued that license by the board for a period of twenty-four (24) months, which may be renewed biennially for a period not to exceed a total of forty-eight (48) months, if the applicant meets the qualifications set forth in Section 73-54-13, submits the required application fees, and provides satisfactory evidence to the board that he or she:

(a) Holds a master's degree or doctoral degree in marriage and family therapy from an institution of higher education in a program that is accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE), or that was in COAMFTE candidacy status at the time of graduation and subsequently received COAMFTE accreditation;

(b) Completed a clinical practicum that consisted of a minimum of five hundred (500) client contact hours and one hundred (100) hours of clinical supervision before receipt of the qualifying degree;

(c) Passes the national Examination in Marital and Family Therapy prescribed by the Association for Marital and Family Therapy Regulatory Boards;

(d) Provides all professional services under the supervision of a qualified supervisor in accordance with a supervision contract approved by the board; and

(e) Has been successfully cleared through a criminal history records check, including a fingerprint and an acceptable sex offender check, by appropriate governmental authorities as prescribed by the board.

SOURCES: Laws, 1997, ch. 516, § 9; reenacted without change, Laws, 1999, ch. 438, § 14; reenacted and amended, Laws, 2001, ch. 421, § 17; reenacted and amended, Laws, 2011, ch. 462, § 23; reenacted without change, Laws, 2014, ch. 395, § 13, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.
Cross References — Examination, see § 73-54-19.
License expiration, renewal, see § 73-54-27.
Grounds for disciplinary sanction, see § 73-54-29.
Disciplinary proceedings, see § 73-54-31.
Disciplinary sanctions, § 73-54-35.

§ 73-54-19. Examination; cost of examination to be paid by applicant [Repealed effective July 1, 2018].

(1) The board shall administer the national examination at least once a year at a time and place designated by the board.

(2) An applicant shall be required to pass the national Examination of Marital and Family Therapy prescribed by the Association for Marital and Family Therapy Regulatory Boards.

(3) The cost of the examination and the cost of administering the examination, in addition to all other fees associated with the examination, shall be paid by the applicant at the time of application.

SOURCES: Laws, 1997, ch. 516, § 10; reenacted without change, Laws, 1999, ch. 438, § 15; reenacted without change, Laws, 2001, ch. 421, § 18; reenacted and amended, Laws, 2011, ch. 462, § 24; reenacted without change, Laws, 2014, ch. 395, § 14, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2) by substituting "Association For Marital and Family

Therapy" for "Association of Marital and Family Therapy." The Joint Committee ratified the correction at its July 13, 2011, meeting.

Editor's Note — For repeal date of this section, see § 73-54-41.

§ 73-54-21. Repealed.

Repealed by Laws of 2001, ch. 421, § 29, eff from and after June 30, 2001.

[Laws, 1997, ch. 516, § 11; reenacted without change, Laws, 1999, ch. 438, § 16, eff from and after June 30, 1999.]

Editor's Note — Former § 73-54-21 provided for waiting periods before reexaminations by marriage and family therapist applicants.

§ 73-54-23. Licensure of persons holding out-of-state license or certification [Repealed effective July 1, 2018].

The board shall issue a license by examination of credentials to any applicant licensed or certified as a marriage and family therapist in another state that has such requirements for the license or certificate that the board is of the opinion that the applicant is competent to engage in the practice of marriage and family therapy in this state, provided that the applicant submits an application on forms prescribed by the board, has passed the national Examination in Marital and Family Therapy, and pays the original licensure fee prescribed by Section 73-54-25. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 1997, ch. 516, § 12; reenacted without change, Laws, 1999, ch. 438, § 17; reenacted without change, Laws, 2001, ch. 421, § 19; reenacted and amended, Laws, 2011, ch. 462, § 25; Laws, 2013, ch. 350, § 39; reenacted without change, Laws, 2014, ch. 395, § 15, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.

Section 73-54-25, referred to in this section, was repealed by Laws of 2011, ch. 462, § 26, effective from and after July 1, 2011.

Comparable Laws from other States — Alabama: Code of Ala. § 34-17A-12.
Arkansas: A.C.A. § 17-27-308.
Florida: Fla. Stat. § 491.006.
Georgia: O.C.G.A. § 43-10A-10.
Louisiana: La. R.S. § 37:1118.
North Carolina: N.C. Gen. Stat. § 90-270.56.
South Carolina: S.C. Code Ann. § 40-75-260.
Tennessee: Tenn. Code Ann. § 63-22-116.

§ 73-54-25. Repealed.

Repealed by Laws of 2011, ch. 462, § 26, effective from and after July 1, 2011.

§ 73-54-25. [Laws, 1997, ch. 516, § 13; reenacted without change, Laws, 1999, ch. 438, § 18; reenacted without change, Laws, 2001, ch. 421, § 20, eff from and after June 30, 2001].

Editor's Note — Former § 73-54-25 directed the board to charge an application fee and examination fee to applicants for licensure as a marriage and family therapist.

§ 73-54-27. Expiration of license; renewal; inactive status [Repealed effective July 1, 2018].

(1) Except as provided in Section 33-1-39, licenses issued under this chapter shall be valid for two (2) years and must be renewed biennially, with the renewal fee being determined by the board but not to exceed Three Hundred Fifty Dollars ($350.00).

(2) The license of any marriage and family therapist or marriage and family therapy associate who fails to renew biennially by the license expiration date shall lapse; the failure to renew the license shall not deprive the marriage and family therapist or marriage and family therapy associate of the right of renewal thereafter. Such lapsed license may be renewed within a period of two (2) years after such lapse upon payment of all fees in arrears.

(3) A marriage and family therapist wishing to renew a license that has been lapsed for more than two (2) years shall be required to reapply for licensure.

(4) The board shall require each licensed marriage and family therapist and marriage and family therapy associate to participate in approved continuing education activities in order to renew a license issued under this chapter.

(5) Any licensed marriage and family therapist who notifies the board, in writing on forms prescribed by the board, may place his or her license on inactive status and shall be excused from the payment of renewal fees until the person notifies the board in writing of the intention to resume active practice. Any licensed marriage and family therapist requesting his or her license to be changed from inactive to active status shall be required to pay the current fee and shall also demonstrate compliance with continuing education requirements as defined by the board. Licensed marriage and family therapy associates are not eligible for inactive status.

SOURCES: Laws, 1997, ch. 516, § 14; reenacted without change, Laws, 1999, ch. 438, § 19; reenacted and amended, Laws, 2001, ch. 421, § 21; Laws, 2007, ch. 309, § 34; reenacted and amended, Laws, 2011, ch. 462, § 27; reenacted without change, Laws, 2014, ch. 395, § 16, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.

§ 73-54-29. Grounds for disciplinary sanction [Repealed effective July 1, 2018].

Licensees subject to this chapter shall conduct their activities, services and practice in accordance with this chapter and any rules promulgated under this chapter. Licensees may be subject to the exercise of the disciplinary sanctions enumerated in Section 73-53-23 if the board finds that a licensee is guilty of any of the actions listed in Section 73-53-17(1) or is guilty of any of the following:

(a) Violation of any provision of this chapter or any rules or regulations of the board adopted under the provisions of this chapter.

(b) Other just and sufficient cause which renders a person unfit to practice marriage and family therapy as determined by the board, but not limited to:

(i) Habitual use of alcohol or drugs to an extent that affects professional competence;

(ii) Adjudication as being mentally incompetent by a court of competent jurisdiction;

(iii) Practicing in a manner detrimental to the public health and welfare;

(iv) Revocation of a license or certification by a licensing agency or by a certifying professional organization;

(v) Any other violation of this chapter or the code of ethical standards of the American Association for Marriage and Family Therapy or other ethical standards adopted by the board under the provisions of this chapter; or

(vi) Continued practice although the individual failed to renew and has a lapsed license.

SOURCES: Laws, 1997, ch. 516, § 15; reenacted without change, Laws, 1999, ch. 438, § 20; reenacted without change, Laws, 2001, ch. 421, § 22; reenacted and amended, Laws, 2011, ch. 462, § 28; reenacted without change, Laws, 2014, ch. 395, § 17, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error at the end of the first sentence in the introductory paragraph of this section. The word "pursuant" was deleted preceding the words "under this chapter." The Joint Committee ratified the correction at its August 5, 2008 meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (b)(v) by substituting "American Association For Marriage and Family Therapy" for "American Association of Marriage and Family Therapy." The Joint Committee ratified the correction at its July 13, 2011, meeting.

Editor's Note — For repeal date of this section, see § 73-54-41.

Cross References — Disciplinary proceedings, see § 73-54-31.

Disciplinary sanctions, see § 73-54-35.

§ 73-54-31. Disciplinary proceedings [Repealed effective July 1, 2018].

(1) The board shall conduct its hearings and disciplinary proceedings in accordance with the provisions of Sections 73-53-17 through 73-53-27, this section and rules and regulations adopted by the board. Any person may be heard by the board in person or by attorney. Every vote and official act of the board shall be entered of record. Executive sessions may be used when discussing individual applicants or for any other purposes allowed by Section 25-41-7. All other hearings and rule-making proceedings shall be open to the

public as provided in the Open Meetings Act (Section 25-41-1 et seq.). A record shall be made of every hearing before the board.

(2) For the purposes of Sections 73-53-17 through 73-53-27 and this section, the board shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers and documents relating to any matter under investigation. Subpoenas shall be issued by the board upon application by any party to a proceeding before the board and a showing of general relevance and reasonable scope. For noncompliance with a subpoena, the board may apply to the circuit court for an order requiring the person subpoenaed to appear before the board and testify and produce books, papers or documents if so ordered. Failure to obey such order of the court may be punished by the court as contempt.

SOURCES: Laws, 1997, ch. 516, § 16; reenacted without change, Laws, 1999, ch. 438, § 21; reenacted without change, Laws, 2001, ch. 421, § 23; reenacted without change, Laws, 2011, ch. 462, § 29; reenacted without change, Laws, 2014, ch. 395, § 18, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.
Cross References — Grounds for disciplinary sanctions, see § 73-54-29.
Disciplinary sanctions, see § 73-54-35.

§ 73-54-33. Use of expert witnesses in proceedings before the board [Repealed effective July 1, 2018].

In any proceeding before the board involving the granting, suspension or revocation of a license or in other proceedings in which expert testimony relating to the practice of marriage and family therapy is necessary, the board may hear evidence from a qualified expert witness or witnesses selected by parties.

SOURCES: Laws, 1997, ch. 516, § 17; reenacted without change, Laws, 1999, ch. 438, § 22; reenacted and amended, Laws, 2001, ch. 421, § 24; reenacted without change, Laws, 2011, ch. 462, § 30; reenacted without change, Laws, 2014, ch. 395, § 19, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.

§ 73-54-35. Disciplinary sanctions [Repealed effective July 1, 2018].

As an additional remedy to those authorized in Section 73-53-23, the board may proceed in the circuit court to enjoin and restrain any unlicensed person from violating any provision of this chapter. The board shall not be required to post bond to such proceeding.

SOURCES: Laws, 1997, ch. 516, § 18; reenacted without change, Laws, 1999, ch. 438, § 23; reenacted without change, Laws, 2001, ch. 421, § 25; reenacted without change, Laws, 2011, ch. 462, § 31; reenacted without change, Laws, 2014, ch. 395, § 20, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.

§ 73-54-37. Confidentiality and privileged information; exceptions [Repealed effective July 1, 2018].

No person licensed under this chapter as a marriage and family therapist or marriage and family therapy associate, in the course of formally reporting, conferring or consulting with administrative superiors, colleagues, consultants, employees, associates or supervisors, who share professional responsibility, shall be required to disclose any information which he may have acquired in rendering marriage and family therapy services, except:

(a) In the course of formally reporting, conferring or consulting with administrative superiors, colleagues, consultants, or supervisors, who share professional responsibility, in which instance all receipts of the information are similarly bound to regard the communications as privileged; or

(b) With written consent from the client or, in the case of death or disability, or in case of the minor, with the written consent of his or her parent, legal guardian or conservator, or other person authorized by the court to file suit; or

(c) When a communication reveals the contemplation of a harmful act, or intent to commit suicide; or

(d) When a person waives the privilege by bringing charges against a licensed marriage and family therapist or marriage and family therapy associate for breach of privileged communication, or any other charge.

SOURCES: Laws, 1997, ch. 516, § 19; reenacted without change, Laws, 1999, ch. 438, § 24; reenacted and amended, Laws, 2001, ch. 421, § 26; reenacted and amended, Laws, 2011, ch. 462, § 32; reenacted without change, Laws, 2014, ch. 395, § 21, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.

§ 73-54-39. Competency of therapist or therapy associate to testify in alimony, custody or divorce actions [Repealed effective July 1, 2018].

If both parties to a marriage have obtained marriage and family therapy by a licensed marriage and family therapist or marriage and family therapy associate, the therapist or therapy associate shall not be competent to testify in an alimony, custody or divorce action concerning information acquired in the course of the therapeutic relationship.

SOURCES: Laws, 1997, ch. 516, § 20; reenacted without change, Laws, 1999, ch. 438, § 25; reenacted without change, Laws, 2001, ch. 421, § 27; reenacted and amended, Laws, 2011, ch. 462, § 33; reenacted without change, Laws, 2014, ch. 395, § 22, eff from and after July 1, 2014.

Editor's Note — For repeal date of this section, see § 73-54-41.

JUDICIAL DECISIONS

1. Construction with rules of evidence.

Although it was arguable that the statute making treating family therapists' testimony inadmissible in family proceedings was repealed by Miss. R. Evid. 1103 because it conflicted with Miss. R. Evid. 601, any error was harmless because the excluded evidence in question was cumulative of other evidence provided by expert witnesses. Mabus v. Mabus, 890 So. 2d 806 (Miss. 2003).

§ 73-54-41. Repeal of Sections 73-54-1 through 73-54-39, 73-53-3, 73-53-8, 73-53-10, 73-53-11, and 73-53-13.

Sections 73-54-1 through 73-54-39, and Sections 73-53-3 73-53-8, 73-53-10, 73-53-11 and 73-53-13, shall stand repealed on July 1, 2018.

SOURCES: Laws, 1999, ch. 438, § 27; Laws, 2001, ch. 421, § 28; Laws, 2011, ch. 462, § 34; Laws, 2014, ch. 395, § 23, eff from and after July 1, 2014.

Editor's Note — Sections 73-54-15 and 73-54-25, included within the span of sections repealed by this section, were repealed by Laws of 2011, ch. 462, effective from and after July 1, 2011.

§ 73-54-43. Licensed marriage and family therapist authorized to perform services that are within the lawful scope of clinical social work practice under certain circumstances.

Whenever any law, regulation or policy of the State of Mississippi or any agency, department, institution or political subdivision of the state authorizes or allows a licensed certified/clinical social worker to perform services that are within the lawful scope of clinical social work practice as defined in Section 73-53-3, those services may also be performed by a licensed marriage and family therapist to the extent that those services are within the lawful scope of practice of marriage and family therapy.

SOURCES: Laws, 2010, ch. 341, § 1, eff from and after July 1, 2010.

Cross References — Licensed certified/clinical social worker authorized to perform services that are within the lawful scope of the practice of marriage and family therapy under certain circumstances, see § 73-53-31.

CHAPTER 55

Mississippi Athletic Trainers Licensure Act

Sec.
73-55-1. Short title.
73-55-3. Definitions.
73-55-5. Use of descriptive names or titles.
73-55-7. Licensing requirements; license for qualified nonresident trainer.
73-55-9. Evaluation and treatment of injuries by athletic trainer in nonclinical and clinical settings; supervision by physician, nurse practitioner or physician assistant.
73-55-11. Repealed.
73-55-13. Fees; continuing education requirements [Repealed effective July 1, 2020].
73-55-15. Construction and effect of chapter.
73-55-17. Mississippi Council of Advisors in Athletic Training; members; powers and duties.
73-55-19. Revocation or suspension of license; notice; hearings; appeals; appeal bond.
73-55-21. Fines and penalties.

§ 73-55-1. Short title.

This chapter shall be known as and may be cited as the “Mississippi Athletic Trainers Licensure Act.”

SOURCES: Laws, 1991, ch. 374, § 1, eff from and after July 1, 1991.

§ 73-55-3. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) “Advisory council” means the Mississippi Council of Advisors in Athletic Training established in this chapter.

(b) “Athletic training” means the treatment of an athlete for risk management and athletic injury prevention, the clinical evaluation and assessment of an athlete for an injury or illness, or both, the immediate care and treatment for an injury or illness, or both, and the rehabilitation and reconditioning of an athlete’s injury or illness, or both, as long as those activities are performed under the direction of a licensed physician, nurse practitioner or physician assistant. The practice of athletic training does not include the practice of physical therapy, the practice of medicine, the practice of osteopathic medicine and surgery, the practice of nursing or the practice of chiropractic.

(c) “Athletic trainer” means a person licensed by the State Department of Health as an athletic trainer after meeting the requirements of this chapter and rules and regulations promulgated pursuant to this chapter, who, upon the advice, consent and oral or written prescriptions or referrals of a licensed physician, nurse practitioner or physician assistant, carries out the practice of athletic training, and in carrying out these functions the athletic trainer is authorized to use physical modalities, such as heat, light, sound, cold, electricity or mechanical devices related to prevention, recognition, evaluation, management, disposition, rehabilitation and treatment. An athletic trainer shall practice only in those areas in which the athletic trainer is competent by reason of training or experience that can be substantiated by records or other evidence found acceptable by the board in the exercise of the board's considered discretion.

(d) "Athletic injury" means any injury sustained by a person as a result of the person's participation in sports, games or recreational activities requiring physical strength, flexibility, range of motion, speed or stamina, or comparable injury.

(e) "Athlete" means an individual who participates in exercises, sports, or games requiring physical strength, agility, flexibility, range of motion, speed or stamina; or an individual with an athletic injury that a licensed physician, nurse practitioner or physician assistant deems would benefit from athletic training services.

(f) "Department" means the State Department of Health.

(g) "Clinical setting" means a hospital, department, outpatient facility or clinic whose primary purpose is sports medicine, rehabilitation or wellness.

(h) "Nonclinical setting" means a location where school, professional, recreational or sanctioned amateur athletic activities are being held.

(i) "Board" means the State Board of Health.

(j) "Physician" means a physician licensed by the State Board of Medical Licensure.

(k) "BOC, Inc.," means the Board of Certification, Incorporated, or its successor agency, the National Credentialing Agency of Athletic Trainers; formerly referred to as the National Athletic Trainers' Association Board of Certification, Inc.

SOURCES: Laws, 1991, ch. 374, § 2; Laws, 2009, ch. 425, § 1, eff from and after July 1, 2009.

§ 73-55-5. Use of descriptive names or titles.

No person shall engage in athletic training or use the titles "athletic trainer," "certified athletic trainer" or "licensed athletic trainer" or use the letters "LAT," or "AT" or any other facsimile thereof, whether or not compensation is received or expected, unless he or she is licensed as an athletic trainer in this state as provided in this chapter.

SOURCES: Laws, 1991, ch. 374, § 3; Laws, 2009, ch. 425, § 2, eff from and after July 1, 2009.

§ 73-55-7. Licensing requirements; license for qualified nonresident trainer.

Any person seeking licensure as an athletic trainer shall meet at least one (1) of the following requirements:

(a) Satisfactorily complete all of the BOC, Inc., qualifications and be certified as an athletic trainer in good standing.

(b) Hold a degree in physical therapy and complete BOC, Inc., certification requirements.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

SOURCES: Laws, 1991, ch. 374, § 4; Laws, 1997, ch. 588, § 65; Laws, 2009, ch. 425, § 3, eff from and after July 1, 2009.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Continuing education requirements, see § 73-55-13.

Revocation of suspension of license, see § 73-55-19.

Fines and penalties, see § 73-55-19.

Renewal fees, continuing education requirements, see § 73-55-13.

Revocation or suspension of license, see §§ 73-55-19.

Comparable Laws from other States — Alabama: Code of Ala. § 34-40-5.

Arkansas: A.C.A. § 17-93-414.

Code of Georgia Annotated, § 43-5-8.

North Carolina: N.C. Gen. Stat. § 90-531.

South Carolina: S.C. Code Ann. § 44-75-60.

Tennessee: Tenn. Code Ann. § 63-24-104.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 9 et seq.

58 Am. Jur. 2d, Occupations, Trades, and Professions §§ 1 et seq.

CJS. 53 C.J.S. Licenses §§ 45 et seq.

§ 73-55-9. Evaluation and treatment of injuries by athletic trainer in nonclinical and clinical settings; supervision by physician, nurse practitioner or physician assistant.

The athletic trainer functioning in the nonclinical and clinical setting may, under the direction of a physician, nurse practitioner or physician assistant, evaluate, treat and provide appropriate immediate care and treatment to injuries incurred by an athlete during participation in or training for scholastic, recreational, professional or sanctioned amateur athletic activities. Evaluation and treatment by an athletic trainer in the nonclinical setting to supportive staff, spectators and other persons other than an athlete shall be limited to immediate care and treatment. An athletic trainer functioning in a clinical setting may evaluate and provide treatment for an athletic injury under the direction or referral of a licensed physician, nurse practitioner or physician assistant. An athletic trainer functioning in the nonclinical and clinical setting may use therapeutic exercise and modalities such as heat, cold, light, air, massage, water, sound and electricity for the treatment of musculoskeletal injuries and the use of passive (manual and mechanical) techniques for the purpose of treatment.

SOURCES: Laws, 1991, ch. 374, § 5; Laws, 2009, ch. 425, § 4, eff from and after July 1, 2009.

§ 73-55-11. Repealed.

Repealed by Laws of 2009, ch. 426, s. 7, effective July 1, 2009.

§ 73-55-11. [Laws, 1991, ch. 374, § 6, eff from and after July 1, 1991.]

Editor's Note — Former § 73-55-11 provided that any person actively engaged as an athletic trainer on July 1, 1991, be issued a license if the athletic trainer submitted proof of two (2) years' experience.

§ 73-55-13. Fees; continuing education requirements [Repealed effective July 1, 2020].

(1) Except as provided in Section 33-1-39, a person licensed as an athletic trainer under this chapter shall pay to the board a fee not to exceed Three Hundred Dollars ($300.00) for every three-year period for a renewal of his license. Any increase in the fee charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65.

(2) Continuing education requirements for license renewal shall be fulfilled during three-year periods running concurrently with the requirement to maintain certification through the BOC, Inc. Proof of the completion of continuing education as required by this section shall be turned in to the board at the time of renewal of license.

SOURCES: Laws, 1991, ch. 374, § 7; Laws, 2007, ch. 309, § 35; Laws, 2009, ch. 425, § 5; Laws, 2016, ch. 510, § 52, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added the last sentence of (1).

§ 73-55-15. Construction and effect of chapter.

(1) Nothing in this chapter shall be construed to authorize the practice of medicine or nursing by any person not licensed by the State Board of Medical Licensure or the Mississippi Board of Nursing.

(2) Nothing in this chapter shall be construed as preventing or restricting any of the following persons from engaging in the profession or occupation for which they are licensed:

(a) Physicians and surgeons licensed by the State Board of Medical Licensure.

(b) Dentists licensed by the State Board of Dental Examiners.

(c) Optometrists licensed by the State Board of Optometry.

(d) Nurses licensed by the Mississippi Board of Nursing.

(e) Chiropractors licensed by the State Board of Chiropractic Examiners.

(f) Podiatrists licensed by the State Board of Medical Licensure.

(g) Physical therapists licensed by the State Board of Physical Therapy.

(h) Occupational therapists licensed by the State Department of Health.

(i) Massage therapists licensed by the State Board of Massage Therapy.

(3) The provisions of this chapter shall not restrict any of the following persons:

(a) Coaches and physical education instructors in the performance of their duties.

(b) Athletic trainers from other nations, states or territories performing their duties for their respective teams or organizations and only during the course of their team or organization's stay in this state.

SOURCES: Laws, 1991, ch. 374, § 8; Laws, 2009, ch. 425, § 6, eff from and after July 1, 2009.

§ 73-55-17. Mississippi Council of Advisors in Athletic Training; members; powers and duties.

(1) There is hereby established the Mississippi Council of Advisors in Athletic Training to aid the board in administering the provisions of this chapter.

(2) The advisory council shall be comprised of the four (4) directors of the Mississippi Athletic Trainers Association, Inc., and one (1) member of the said association who shall be a licensed physician elected at large by the membership of said association for a term of four (4) years.

(3) The members of the advisory council shall serve without compensation.

(4) The advisory council shall meet during the first month of each calendar year to select a chairman and for other appropriate purposes except for the first year after July 1, 1991, when the council shall meet within sixty (60) days following appointment. At least one (1) additional meeting shall be held before the end of each calendar year. Further meetings may be convened at the call of the chairman or the written request of a majority of the council members.

(5) A majority of the members of the council shall constitute a quorum for all purposes.

(6) The board is hereby empowered, authorized and directed to adopt, amend, promulgate and enforce such rules, regulations and standards governing athletic trainers as may be necessary to further the accomplishment of the

purpose of the governing law, and in so doing shall utilize as the basis thereof the corresponding recommendations of the advisory council.

SOURCES: Laws, 1991, ch. 374, § 9, eff from and after July 1, 1991.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (4) by substituting "first year after July 1, 1991" for "first year after passage of this chapter." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

§ 73-55-19. Revocation or suspension of license; notice; hearings; appeals; appeal bond.

(1) Any person licensed under this chapter may have his license revoked or suspended for a fixed period to be determined by the board for any of the following causes:

(a) Being convicted of an offense involving moral turpitude. The record of such conviction, or certified copy thereof from the clerk of the court where such conviction occurred or by the judge of that court, shall be sufficient evidence to warrant revocation or suspension.

(b) By securing a license under this chapter through fraud or deceit.

(c) For unethical conduct or for gross ignorance or inefficiency in the conduct of his practice.

(d) For knowingly practicing while suffering with a contagious or infectious disease.

(e) For the use of a false name or alias in the practice of his profession.

(f) For violating any of the provisions of this chapter.

(2) Any person, whose license is sought to be revoked or suspended under the provisions of this chapter, shall be given thirty (30) days' notice, in writing, enumerating the charges and specifying a date for public hearing thereon. The hearing shall be held in the county where the person's business is conducted. The board may issue subpoenas, compel the attendance and testimony of witnesses, and place them under oath, the same as any court of competent jurisdiction where the hearing takes place.

(3) At all hearings the board may designate in writing one or more persons deemed competent by the board to conduct the hearing as trial examiner or trial committee, with the decision to be rendered in accordance with the provisions of subsection (4) of this section.

(4) After a hearing has been completed the trial examiner or trial committee who conducted the hearing shall proceed to consider the case and, as soon as practicable, shall render a decision. In any case, the decision must be rendered within sixty (60) days after the hearing. The decision shall contain:

(a) The findings of fact made by the trial examiner or trial committee;

(b) Conclusions of law reached by the trial examiner or trial committee; and

(c) The order based upon these findings of fact and conclusions of law.

(5) From any revocation or suspension, the person charged may, within thirty (30) days thereof, appeal to the chancery court of the county where the hearing was held.

(6) Notice of appeals shall be filed in the office of the clerk of the court, who shall issue a writ of certiorari directed to the board, commanding it within ten (10) days after service thereof to certify to such court its entire record in the matter in which the appeal has been taken. The appeal shall thereupon be heard in the due course by said court without a jury, and the court shall review the record and make its determination of the cause between the parties.

(7) If there is an appeal, such appeal may, in the discretion of and on motion to the chancery court, act as a supersedeas. The chancery court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may, in the discretion of the chancellor, be tried in vacation.

(8) Any person taking an appeal shall post a satisfactory bond in the amount of Two Hundred Dollars ($200.00) for payment of any costs which may be adjudged against him.

(9) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1991, ch. 374, § 10; Laws, 1996, ch. 507, § 81, eff from and after July 1, 1996.

Cross References — Fines and penalties, see § 73-55-21.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 9 et seq.

58 Am. Jur. 2d, Occupations, Trades, and Professions §§ 1 et seq.

1A Am. Jur. Pl & Pr Forms (Rev), Administrative Law, Form 341.2 (complaint, petition, or declaration — by license holder — against administrative agency

— to enjoin further proceedings to suspend or revoke license — attempt to suspend or revoke license on grounds not listed in statute authorizing suspension or revocation of license).

CJS. 53 C.J.S. Licenses §§ 45 et seq.

§ 73-55-21. Fines and penalties.

(1) Any person convicted of a violation of this chapter shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for not less than ten (10) days nor more than sixty (60) days, or both such fine and imprisonment.

(2) Any person who shall knowingly make a material, false statement in his application for license under this chapter or in response to any inquiry by the State Department of Health or the State Board of Health, shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) or imprisoned for not less than ten (10) days nor more than sixty (60) days, or both such fine and imprisonment.

SOURCES: Laws, 1991, ch. 374, § 11, eff from and after July 1, 1991.

CHAPTER 57

Mississippi Respiratory Care Practice Act

Sec.
73-57-1. Short title.
73-57-3. Purpose.
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73-57-29. Fees and disposition of revenue [Repealed effective July 1, 2020].
73-57-31. Grounds for revocation, suspension or refusal to renew license or permit, or disciplinary action.
73-57-33. Investigation of complaints; revocation, suspension or refusal to renew license; judicial review.
73-57-35. Unlicensed practice; application of Good Samaritan Act.
73-57-37. Practice of medicine prohibited.
73-57-39. Offenses; penalties.

§ 73-57-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Respiratory Care Practice Act."

SOURCES: Laws, 1991, ch. 500, § 1; reenacted without change, Laws, 2012, ch. 386, § 1, eff from and after July 1, 2012.

§ 73-57-3. Purpose.

In order to safeguard the public health, safety and welfare; to insure the highest degree of professional conduct on the part of respiratory care practitioners; and to insure the availability of high quality respiratory care services, it is the purpose of this chapter to provide for the regulation of persons offering respiratory care services to the public.

SOURCES: Laws, 1991, ch. 500, § 2; reenacted without change, Laws, 2012, ch. 386, § 2, eff from and after July 1, 2012.

§ 73-57-5. Definitions.

The following terms shall have the meaning ascribed herein unless the context otherwise requires:

(a) "Board" shall mean the Mississippi State Board of Health.

(b) "Council" shall mean the Respiratory Care Advisory Council.

(c) "License" shall mean the document of licensure issued by the board.

(d) "Respiratory care" shall mean the allied health profession responsible for the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system, pursuant to the orders of a physician licensed in the State of Mississippi.

(e) "Practice of respiratory care" shall include, but not be limited to: direct and indirect respiratory care services, including, but not limited to, the administration of pharmacological, diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician; transcription and implementation of the written or verbal orders of a physician pertaining to the practice of respiratory care; observing and monitoring signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics; and implementation based on observed abnormalities, of appropriate reporting, referral, respiratory care protocols or changes in treatment, pursuant to a prescription by a person authorized to practice medicine under the laws of the State of Mississippi; or the initiation of emergency procedures under the regulations of the board or as otherwise permitted in this chapter. The practice of respiratory care may be performed in any clinic, hospital, skilled nursing facility, and private dwelling, or other place deemed appropriate or necessary by the board, in accordance with the prescription or verbal order of a physician.

(f) "Performance of respiratory care" means respiratory care in accordance with the prescription of a licensed physician and includes, but is not limited to, the diagnostic and therapeutic use of the following: administration of medical gases (except for the purpose of anesthesia), aerosols and humidification; environmental control mechanisms and hyperbaric therapy; pharmacologic agents related to respiratory care procedures; mechanical or physiological ventilatory support; bronchopulmonary hygiene; cardiopulmonary resuscitation; maintenance of the natural airway; insertion and maintenance of artificial airways; specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of pulmonary abnormalities, including measurements of ventilatory volumes, pressures, flows, collection of specimens of blood and blood gases, expired and inspired gas samples, respiratory secretions, and pulmonary function testing; and hemodynamic and other related physiologist measurements of the cardiopulmonary system.

(g) "Respiratory care practitioner" means:

(i) A person employed in the practice of respiratory care who has the knowledge and skill necessary to administer respiratory care as defined in subsections (e) and (f) of this section;

(ii) A person who is capable of serving as a resource to the physician in relation to the technical aspects of respiratory care as to safe and effective methods for administering respiratory care modalities;

(iii) A person who is able to function in situations of unsupervised patient contact requiring great individual judgment; and

(iv) A person capable of supervising, directing and teaching less skilled personnel in the provision of respiratory care services.

(h) Respiratory care includes "inhalation therapy" and "respiratory therapy."

SOURCES: Laws, 1991, ch. 500, § 3; Laws, 2012, ch. 386, § 3, eff from and after July 1, 2012.

§ 73-57-7. Establishment and composition of Respiratory Advisory Council; appointment, terms and removal of members.

(1) There is established the Respiratory Care Advisory Council under the jurisdiction of the State Board of Health. The purpose of the council is to advise the State Board of Health on matters relative to the administration and interpretation of the provisions of this chapter. The council shall consist of nine (9) members, all citizens of the United States and residents of this state. There shall be one (1) public member, three (3) physician members consisting of a member of the American College of Chest Physicians, a member of the American Society of Anesthesiologists, and a member of the American Thoracic Society, and five (5) members engaged in the practice of respiratory care for a period of not less than five (5) years preceding their appointment to the council and who are members of the American Association for Respiratory Care and/or its state affiliate. At least one (1) member of the council who is engaged in the practice of respiratory care shall also be a licensed registered nurse.

(2) The State Board of Health shall appoint the members of the council for terms of four (4) years, with no member being appointed for more than three (3) consecutive terms and with the respiratory care practitioner members being licensed under the provisions of this chapter. Vacancies in the council shall be filled by appointment by the State Board of Health in like manner for the balance of the unexpired term and each member shall serve until his successor is appointed by the board in like manner for the balance of an unexpired term and each member shall serve until his successor is appointed and qualified.

(3) Upon expiration of the term of a physician member, the state societies of the American College of Chest Physicians, American Society of Anesthesiologists or American Thoracic Society may each, as appropriate, submit to the State Board of Health a list of persons qualified to serve on the council replacing the expired term of their respective member. Upon expiration of the term of any respiratory care practitioner member, the state society of the American Association for Respiratory Care may submit to the State Board of Health a list of persons qualified to serve for each position vacated. Appoint-

ments may be made from these lists by the board and additional lists may be provided by the respective organizations if requested by the board.

(4) The State Board of Health shall remove any member from the council for neglect of any duty required by law or for incompetency or unethical or dishonorable conduct.

SOURCES: Laws, 1991, ch. 500, § 4; Laws, 2012, ch. 386, § 4, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected two typographical errors in the first sentence of subsection (3). The words "American College Chest Physicians, American Society of Anesthesiologist" were changed to "American College of Chest Physicians, American Society of Anesthesiologists". The Joint Committee ratified the corrections at its May 20, 1998 meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section. In subsection (3), "persons" was inserted preceding "qualified to serve" in the second sentence. The Joint Committee ratified the correction at its August 16, 2012, meeting.

ATTORNEY GENERAL OPINIONS

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

§ 73-57-9. Officers and meetings of council.

(1) The council shall meet at least twice each year and shall elect annually during odd numbered years, a chairman from its physician members and from its respiratory care members a vice chairman. In even numbered years, it shall elect from its respiratory care members a chairman and from its physician members a vice chairman. The council may convene at the request of the chairman or as the board may determine for such other meetings as may be deemed necessary to transact its business.

(2) A majority (five (5)) of the members of the council, including the chairman or vice chairman, constitute a quorum at any meeting and a majority of the required quorum is sufficient for the council to take action by vote.

SOURCES: Laws, 1991, ch. 500, § 5; reenacted without change, Laws, 2012, ch. 386, § 5, eff from and after July 1, 2012.

§ 73-57-11. Duties of Board.

The board, with the advice of the council, shall:

(a) Examine, license and renew the license of duly qualified applicants.

(b) Maintain an up-to-date list of every living person licensed to practice respiratory care under this chapter. The list shall show the licensee's last-known place of employment, last-known place of residence, and the date and number of his license/certificate.

(c) Cause the prosecution of all persons violating this chapter and incur necessary expenses therefor.

(d) Keep a record of all proceedings of the board and such record shall be made available to the public for inspection during reasonable business hours.

(e) Conduct hearings upon charges for discipline of a licensee, or denial, revocation or suspension of a license.

(f) Maintain an up-to-date list of persons whose license has been suspended, revoked or denied. This list shall include the name(s), social security numbers, type and cause of sanction, date and penalty incurred, and the length of penalty. This list shall be available for public inspection during reasonable business hours. This list shall be supplied to similar boards in other states upon request.

SOURCES: Laws, 1991, ch. 500, § 6; Laws, 2012, ch. 386, § 6, eff from and after July 1, 2012.

§ 73-57-13. Powers of board.

The board, with the advice of the council, may:

(a) Adopt such rules and regulations not inconsistent with the law as may be necessary to carry into effect the provisions of this chapter. Rules and regulations shall be adopted in accordance with the Administrative Procedures Law of the State of Mississippi.

(b) Employ such personnel as necessary to perform the functions of the board.

(c) Establish licensure requirements and procedures as deemed appropriate.

(d) Secure the services of resource consultants as deemed necessary by the board. Resource consultants shall receive travel and other necessary expenses, consistent with state laws and policies, incurred while engaged in consultative service to the board.

(e) Enter into agreements or contracts, consistent with state law, with outside organizations for the purpose of developing, administering, grading and/or reporting the results of licensing examinations. Such groups shall be capable of meeting the standards of the National Commission for Health Certifying Agencies, or its equivalent. The licensing examinations shall be validated and nationally recognized as testing respiratory care competencies.

SOURCES: Laws, 1991, ch. 500, § 7; reenacted without change, Laws, 2012, ch. 386, § 7, eff from and after July 1, 2012.

Cross References — Administrative Procedures Law, see § 25-43-1.01 et seq.

§ 73-57-15. Compensation of council members.

(1) A member of the council shall receive compensation at the daily rate authorized by law for similar boards within this state plus actual and necessary travel and other expenses incurred while engaged in the discharge of official duties in accordance with the standard travel regulations of the State of Mississippi.

(2) Members of the council shall enjoy the same rights of protection from personal liability as those enjoyed by other employees of the state for actions taken while acting under the provisions of this chapter and in the course of their duties.

SOURCES: Laws, 1991, ch. 500, § 8; reenacted without change, Laws, 2012, ch. 386, § 8, eff from and after July 1, 2012.

§ 73-57-17. Criteria for licensing.

(1) An applicant for a license to practice respiratory care shall submit to the board written evidence, verified by oath, that the applicant holds a credential, conferred by the National Board of Respiratory Care, as a Certified Respiratory Technician (CRT) and/or as a Registered Respiratory Therapist (RRT), or their successor credentials, providing such credential has not been suspended or revoked, or at the time of application has not lapsed.

(2) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Laws, 1991, ch. 500, § 9; Laws, 1997, ch. 588, § 66; Laws, 2012, ch. 386, § 9, eff from and after July 1, 2012.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Examinations, see § 73-57-19.

Temporary permits, see § 73-57-21.

Grandfather clause, see § 73-57-23.

Fraud or deceit in procuring license or renewal of license as grounds for revocation, suspension or refusal to renew license, see § 73-57-31.

Penalties for practicing respiratory care under cover of respiratory care license illegally or fraudulently obtained, see § 73-57-39.

Comparable Laws from other States — Alabama: Code of Ala. § 34-27B-3.

Arkansas: A.C.A. § 17-99-304.

Florida: Fla. Stat. § 468.358.

Georgia: O.C.G.A. § 43-34-147.2.

Louisiana: La. R.S. § 37:3354.

North Carolina: N.C. Gen. Stat. § 90-655.

South Carolina: S.C. Code Ann. § 40-47-610.

Tennessee: Tenn. Code Ann. § 63-27-116.

§ 73-57-19. Examinations [Repealed effective July 1, 2020].

(1) Examinations for the licensure in respiratory care will be conducted not less than two (2) times a year and at such places as may be determined by the board.

(2) An applicant applying for license to practice respiratory care shall pay an administrative fee to the board. A fee shall be required for each examination or reexamination. If an applicant fails to complete the requirements for licensing within two (2) years from the date of filing, the application is deemed to be abandoned.

(3) A fee shall be required for each re-registration.

(4) Any increase in the fees charged by the board under this section shall be in accordance with the provisions of Section 41-3-65.

SOURCES: Laws, 1991, ch. 500, § 10; Laws, 2016, ch. 510, § 53, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."
Amendment Notes — The 2016 amendment added (4).
Cross References — Fees to be deposited in Respiratory Care Fund, see § 73-57-29.

§ 73-57-21. Temporary permits [Repealed effective July 1, 2020].

Upon payment of a fee, the board may issue a temporary permit to practice respiratory care for a period of six (6) months to an applicant for licensing who is a student in an approved respiratory care education program who expects to graduate within the next thirty (30) calendar days and who is eligible to sit for the CRT, RRT, or their successor examination. Any increase in the fee charged by the board under this section shall be in accordance with the provisions of Section 41-3-65.

SOURCES: Laws, 1991, ch. 500, § 11; Laws, 2012, ch. 386, § 10; Laws, 2016, ch. 510, § 54, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."
Amendment Notes — The 2016 amendment added the last sentence.
Cross References — Fees to be deposited in Respiratory Care Fund, see § 73-57-29.

§ 73-57-23. Grandfather clause.

The board shall issue a license to perform respiratory care to an applicant, who, as of July 1, 1991, has passed the NBRC administered entry level or advanced practitioner examination, or their equivalent, or is a graduate of an educational program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation (CAHEA) in collaboration with the Joint Review Committee for Respiratory Therapy Education (JRCRTE) or their successor organizations. Other applicants who have not passed either of these NBRC examinations, or their equivalent, after July 1, 1991, and, who through written evidence, verified by oath, demonstrate that they are presently functioning in the capacity of a respiratory care practitioner as defined by this chapter, and have done so for a period of at least twelve (12) months prior to July 1, 1991, shall be given a license to practice respiratory care.

SOURCES: Laws, 1991, ch. 500, § 12, eff from and after July 1, 1991.

§ 73-57-25. Professional identification.

A person holding a license to practice respiratory care in this state may use the title "licensed respiratory care practitioner" and the abbreviation "L.R.C.P.", "RCP" or "RCP-L".

SOURCES: Laws, 1991, ch. 500, § 13; Laws, 2012, ch. 386, § 11, eff from and after July 1, 2012.

Cross References — Penalties for unauthorized use of the title "licensed respiratory care practitioner," "L.R.C.P." or other words, letters, signs, symbols or devices to indicate person using them is a licensed respiratory care practitioner, see § 73-57-39.

§ 73-57-27. Renewal of licenses [Repealed effective July 1, 2020].

(1) A license shall be renewed biennially beginning with the first renewal term after the issuance of the license, except as herein provided. The board shall provide notice of renewal at least thirty (30) calendar days prior to expiration for renewal of license to every person to whom a license was issued or renewed during the preceding renewal period. The notice of renewal shall indicate the renewal process and required fees required to be completed before the date of expiration.

(2) Upon receipt of the notice of renewal and the renewal fee, the board shall verify its contents and shall issue the licensee a license for the current renewal period, which shall be valid for the period stated thereon. The board, with the advice of the council, shall establish continuing education requirements for biennial renewal of the license, which shall include proof of completion of at least fifteen (15) clock hours approved by the board for continuing education credit. Any increase in the fee charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65.

(3) A licensee who allows his license to lapse by failing to renew it may be reinstated by the board upon payment of the renewal fee and the reinstatement fee, provided that such request for reinstatement is made within two (2) years of the end of the renewal period. Any increase in the fee charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65.

(4) A respiratory care practitioner who does not engage in the practice of respiratory care during the succeeding renewal period is not required to pay

the renewal fee as long as he remains inactive. If he desires to resume the practice of respiratory care, he shall notify the board of his intent and shall satisfy the current requirements of the board in addition to remitting the renewal fee for the current renewal period and the reinstatement fee.

(5) The board is authorized to establish fees for replacement and duplicate licenses, and any increase in the fees charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65.

SOURCES: Laws, 1991, ch. 500, § 14; Laws, 2007, ch. 309, § 36; Laws, 2012, ch. 386, § 12; Laws, 2016, ch. 510, § 55, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added the last sentence of (2) and (3); inserted "renewal" near the beginning of the first sentence of (2); added "and any increase in the fees ... Section 41-3-65" at the end of (5); and made minor stylistic changes.

Cross References — Fees to be deposited in Respiratory Care Fund, see § 73-57-29.

§ 73-57-29. Fees and disposition of revenue [Repealed effective July 1, 2020].

All fees established by the board under this chapter shall be set in such an amount as is necessary to reimburse the state for the cost of services rendered, not to exceed a biennial sum of Two Hundred Fifty Dollars ($250.00) to be paid by any individual. Any increase in the fees charged by the board under this chapter shall be in accordance with the provisions of Section 41-3-65. Fees received by the board and monies collected under this chapter shall be deposited in the State Treasury to the credit of the Respiratory Care Fund. Expenses incurred in the performance of this chapter shall be paid in accordance with the accounting laws of the state.

SOURCES: Laws, 1991, ch. 500, § 15; reenacted without change, Laws, 2012, ch. 386, § 13; Laws, 2016, ch. 510, § 56, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added the second sentence.

§ 73-57-31. Grounds for revocation, suspension or refusal to renew license or permit, or disciplinary action.

(1) The board may revoke, suspend or refuse to renew any license or permit, or place on probation, or otherwise reprimand a licensee or permit holder, or deny a license to an applicant if it finds that person:

(a) Is guilty of fraud or deceit in procuring or attempting to procure a license or renewal of a license to practice respiratory care.

(b) Is unfit or incompetent by reason of negligence, habits or other causes of incompetency.

(c) Is habitually intemperate in the use of alcoholic beverages.

(d) Is addicted to, or has improperly obtained, possessed, used or distributed habit-forming drugs or narcotics.

(e) Is guilty of dishonest or unethical conduct.

(f) Has practiced respiratory care after his license or permit has expired or has been suspended.

(g) Has practiced respiratory care under cover of any permit or license illegally or fraudulently obtained or issued.

(h) Has violated or aided or abetted others in violation of any provision of this chapter.

(2) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license or permit of any licensee or permit holder for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license or permit for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license or permit suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license or permit suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1991, ch. 500, § 16; Laws, 1996, ch. 507, § 82; reenacted without change, Laws, 2012, ch. 386, § 14, eff from and after July 1, 2012.

Cross References — Investigation of complaints, hearing, appeal, see § 73-57-33.
Offenses, penalties, see § 73-57-39.
Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

§ 73-57-33. Investigation of complaints; revocation, suspension or refusal to renew license; judicial review.

(1) Upon the filing of a written complaint with the board, charging a person with having committed any of the acts described in Section 73-57-31, the authorized employee of the board, shall make an investigation. If the board finds reasonable grounds for the complaint, a time and place for a hearing will be set, notice of which shall be served on the licensee, permit holder or applicant at least fifteen (15) calendar days prior thereto. The notice shall be by personal service or by certified or registered mail sent to the last-known address of the person.

(2) The board may petition the circuit court for the county within which the hearing is being held to issue subpoenas for the attendance of witnesses and the production of necessary evidence in any hearing before it. Upon request of the respondent or his counsel, the board shall petition the court to issue subpoenas in behalf of the respondent. The circuit court upon petition may issue such subpoenas as it deems necessary.

(3) At the hearing the board shall administer oaths as may be necessary for the proper conduct of the hearing. The accused shall have the right to appear either personally or by counsel, or both, to produce witnesses or evidence in his or her behalf and to cross-examine witnesses. All hearings before the board shall be conducted by the board, which shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be based upon sufficient legal evidence to sustain it. A final decision by the board shall include findings of fact and conclusions of law, separately stated, of which the accused shall receive a copy.

(4) If the board determined that probable cause and sufficient legal evidence exist to believe that an applicant does not possess the qualifications required by this chapter or that an accused has violated any of the provisions of Section 73-57-31 of this chapter, the board may refuse to issue a license to the applicant, or revoke, suspend or refuse to renew a license.

(5) The right to appeal from the action of the board in denying, revoking, suspending or refusing to renew any license issued by the board is hereby granted. Such appeal shall be to the circuit court of the county of the residence of the licensee on the record made, including a verbatim transcript of the testimony at the hearing. The appeal must be taken within thirty (30) days after notice of the action of the board in denying, revoking, suspending or refusing to renew the license. The appeal is perfected upon filing notice of the appeal, together with a bond in the sum of One Hundred Dollars ($100.00), with two (2) sureties, conditioned that if the action of the board in denying, revoking, suspending or refusing to renew the license be affirmed by the circuit court, the licensee will pay the costs of the appeal and the action in the circuit court. Such bond shall be approved by the president of the board. Appeals may be had to the Supreme Court of the State of Mississippi as provided by law from any final action of the circuit court. Actions taken by the board in suspending a license or permit when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license or permit suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SOURCES: Laws, 1991, ch. 500, § 17; Laws, 1996, ch. 507, § 83; Laws, 2012, ch. 386, § 15, eff from and after July 1, 2012.

Cross References — Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

§ 73-57-35. Unlicensed practice; application of Good Samaritan Act.

(1) From and after July 1, 1992, no person shall practice respiratory care or represent himself to be a respiratory care practitioner unless he is licensed under this chapter, except as otherwise provided by this chapter.

(2) This chapter does not prohibit:

(a) The practice of respiratory care which is an integral part of the program of study by students enrolled in a respiratory care education program recognized by the Joint Review Committee for Respiratory Therapy Education and the American Medical Association Council on Allied Health Education or their successors. Students enrolled in respiratory therapy education programs shall be identified as "student-RCP" and shall only provide respiratory care under direct clinical supervision.

(b) Self-care by a patient, or gratuitous care by a friend or family member who does not represent or hold himself out to be a respiratory care practitioner.

(c) Respiratory care services rendered in the course of an emergency.

(d) Persons in the military services or working in federal facilities shall be exempted from the provisions of this chapter when functioning in the course of their assigned duties.

(e) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formalized or specialized training.

(3) Nothing in this chapter is intended to limit, preclude or otherwise interfere with the practices of other persons and health providers licensed by appropriate agencies of the State of Mississippi.

(4) An individual who, by passing an examination which includes content in one or more of the functions included in this chapter, shall not be prohibited from performing such procedures for which he was tested, so long as the testing body offering the examination is certified by the National Commission for Health Certifying Agencies or its equivalent, and so long as the individual is a licensed health care provider in the State of Mississippi.

(5) Practitioners regulated under this chapter shall be covered under the state's "Good Samaritan Act."

SOURCES: Laws, 1991, ch. 500, § 18; Laws, 2012, ch. 386, § 16, eff from and after July 1, 2012.

Cross References — Good Samaritan act, see § 73-25-37.

§ 73-57-37. Practice of medicine prohibited.

Nothing in this chapter shall be construed to permit the practice of medicine.

SOURCES: Laws, 1991, ch. 500, § 19; reenacted without change, Laws, 2012, ch. 386, § 17, eff from and after July 1, 2012.

§ 73-57-39. Offenses; penalties.

(1) It is a misdemeanor for any person to:

(a) Sell, fraudulently obtain or furnish any respiratory care permit, license, record, or aid or abet therein.

(b) Practice respiratory care under cover of any respiratory care diploma, permit, license or record illegally or fraudulently obtained or issued.

(c) Practice respiratory care unless duly licensed to do so under the provisions of this chapter.

(d) Impersonate in any manner or pretend to be a respiratory care practitioner or use the title "licensed respiratory care practitioner," the letters "L.R.C.P." or any other words, letters, signs, symbols or devices to indicate the person using them is a licensed respiratory care practitioner, unless duly authorized by license or permit to perform under the provisions of this chapter.

(e) Practice respiratory care during the time his license or permit is suspended, revoked or expired.

(f) Fail to notify the board of the suspension, probation or revocation of any past or currently held licenses, required to practice respiratory care in this or any other jurisdiction.

(g) Make false representations or impersonate or act as a proxy for another person or allow or aid any person to impersonate him in connection with any examination or application for licensing or request to be examined or licensed.

(h) Otherwise violate any provisions of this chapter.

(2) Such misdemeanor shall, upon conviction, be punishable by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment for not more than six (6) months or by both fine and imprisonment for each offense.

SOURCES: Laws, 1991, ch. 500, § 20; reenacted without change, Laws, 2012, ch. 386, § 18, eff from and after July 1, 2012.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 59

Residential Builders and Remodelers

Sec.
73-59-1. Definitions.
73-59-3. Active or inactive license requirement; prerequisites; fee; expiration of license.
73-59-5. Application for examination and license; fee; examination and other factors considered in licensing; record of examination; reexamination; applicant to disclose other states in which licensed.
73-59-7. Emergency licenses; fee.
73-59-9. Violations in connection with licensing; penalties; builder or remodeler without license may not bring certain actions.
73-59-11. Additional duties of board.
73-59-13. Charges of misconduct; disciplinary action; investigation; notice and hearing; subpoena; procedure; decision and powers of board; penalties; appeals.
73-59-15. Persons and matters exempt.
73-59-17. Denial of permit to persons not duly licensed; reporting of violations.
73-59-19. Licensee may work on certain commercial structures without additional license.
73-59-21. Standing Committee on Residential Builders and Remodelers; appointment; quorum; powers.

§ 73-59-1. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed herein:

(a) "Board" means the State Board of Contractors created in Section 31-3-3, Mississippi Code of 1972.

(b) "Residential builder" means any corporation, partnership or individual who constructs a building or structure for sale for use by another as a residence or who, for a fixed price, commission, fee, wage or other compensation, undertakes or offers to undertake the construction, or superintending of the construction, of any building or structure which is not more than three (3) floors in height, to be used by another as a residence, when the total cost of the undertaking exceeds Fifty Thousand Dollars ($50,000.00).

(c) "Remodeler" means any corporation, partnership or individual who, for a fixed price, commission, fee, wage or other compensation, undertakes or offers to undertake the construction, or superintending of the construction, of improvements to an existing residence when the total cost of the improvements exceeds Ten Thousand Dollars ($10,000.00).

(d) "Residential construction" means any undertaking described in paragraph (b) of this section performed by a residential builder.

(e) "Residential improvement" means any undertaking described in paragraph (c) of this section performed by a remodeler.

(f) "Active licensee" means any builder or remodeler licensed under this chapter and engaged in building and remodeling.

(g) "Inactive licensee" means any builder or remodeler licensed under this chapter and not engaged in building or remodeling.

SOURCES: Laws, 1993, ch. 534, § 1; reenacted, Laws, 1995, ch. 431, § 1; reenacted without change, Laws, 2000, ch. 345, § 1; reenacted without change, Laws, 2005, ch. 375, § 1; reenacted without change, Laws, 2009, ch. 556, § 1; reenacted without change, Laws, 2011, ch. 433, § 1; Laws, 2012, ch. 416, § 1; reenacted and amended, Laws, 2015, ch. 410, § 11, eff from and after July 1, 2015.

Editor's Note — Laws of 1995, ch. 431, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556, § 13, and as amended by Laws of 2011, ch. 433, § 13, provided for the repeal of this section effective July 1, 2015. The language providing for the repeal of this section was subsequently deleted by Laws of 2015, ch. 410. § 22.

Laws of 1995, ch. 431, § 14, as amended by Laws of 2000, ch. 345, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556, § 13, and as amended by Laws of 2011, ch. 433, § 13, provided for the repeal of this section effective July 1, 2015. The language providing for the repeal of this section was subsequently deleted by Laws of 2015, ch. 410, § 22, effective July 1, 2015.

Cross References — Two residential builders, as defined in this section, to be appointed to State Board of Contractors, see § 31-3-3.

JUDICIAL DECISIONS

1. Remodeler barred from recovery.

Circuit court erred in affirming a county court's decision to award a roofer damages on his breach of contract claim against a homeowner on the ground that the roofer acted as the homeowner's agent or construction manager because the roofer acted as a general contractor, not as an agent or construction manager, when he testified that (1) he temporarily preserved the homeowner's roof while the house was being repaired, (2) he did not have much contact with the homeowner, (3) he hired, fired, and paid the subcontractors, (4) he performed some of the repairs and maintenance on the home, and (5) he dealt with everything on behalf of the homeowner, including paying subcontractors out of his pocket; the roofer acted as a remodeler within the meaning of Miss. Code Ann. § 73-59-1(c) and was barred from recovery by Miss. Code Ann. § 73-59-9(3) because he did so without a license. Puckett v. Gordon, 16 So. 3d 764 (Miss. Ct. App. 2009).

§ 73-59-3. Active or inactive license requirement; prerequisites; fee; expiration of license.

(1) Except as otherwise provided in Section 73-59-15 or Section 33-1-39, persons who perform or formerly performed residential construction or residential improvement shall be licensed by the board annually as an active licensee or inactive licensee, as appropriate, and, as a prerequisite to obtaining a license or renewal thereof, each shall submit to the board:

(a) Proof of workers' compensation insurance, if applicable; however, workers' compensation insurance shall not be required for inactive licensees;

(b) A federal employment identification number or social security number.

(2) The board may require liability insurance to be licensed under this chapter and it shall be reflected on the certificate of licensure; however, liability insurance shall not be required for inactive licensees.

(3) The board shall issue or renew a license to an active or inactive residential builder or remodeler upon payment to the board of the license fee. The initial license fee shall be Fifty Dollars ($50.00). The license fee may thereafter be increased or decreased by the board and cannot exceed One Hundred Dollars ($100.00); however, the receipts from fees collected by the board shall be no greater than the amount required to pay all costs and expenses incurred by the board in enforcing the provisions of this chapter. Twenty-five Dollars ($25.00) of the fee required by this section which is assessed to residential builders licensed under the provisions of Section 73-59-1 et seq. shall be deposited to the Construction Education Fund created pursuant to Section 31-3-14 and shall be distributed to the Mississippi Housing Institute. The remaining fees collected under this chapter shall be deposited into the special fund in the State Treasury known as the "State Board of Contractors Fund" created pursuant to Section 31-3-17 and shall be used for the administration and enforcement of this chapter and as provided in Section 31-3-14. Amounts in such fund shall not lapse into the State General Fund at the end of a fiscal year. Interest accrued to such fund shall remain in the fund. All expenditures from the special fund shall be by requisition to the Department of Finance and Administration, signed by the executive director of the board and countersigned by the chairman or vice chairman of the board.

(4) Except as provided in Section 33-1-39, the license shall expire on the last day of the twelfth month following its issuance or renewal and shall become invalid unless renewed. The board may notify by mail or e-mail every licensee under this chapter of the date of the expiration of his license and the amount of the fee required for renewal of the license for one (1) year. To receive notification by e-mail, a licensee must notify the board of his desire to receive notification by e-mail and provide an e-mail address. Such notice may be mailed or e-mailed within thirty (30) days prior to the expiration date of the license. The failure on the part of any licensee to renew his license annually in such twelfth month shall not deprive such licensee of the right of renewal, provided that renewal is effected within one hundred eighty (180) days after the expiration date of the license by payment of the license fee plus a penalty of ten percent (10%) of the license fee. A new license required to replace a revoked, lost, mutilated or destroyed license may be issued, subject to the rules of the board, for a charge of not more than Fifty Dollars ($50.00). An inactive licensee may become an active licensee upon application meeting all the requirements of this section.

(5) Any person who is not a resident of the State of Mississippi who desires to perform residential construction or residential improvement shall be licensed to perform such construction or improvement as provided by this chapter.

SOURCES: Laws, 1993, ch. 534, § 2; reenacted and amended, Laws, 1995, ch. 431, § 2; Laws, 1998, ch. 535, § 1; reenacted and amended, Laws, 2000, ch. 345, § 2; Laws, 2002, ch. 396, § 1; Laws, 2004, ch. 368, § 2; reenacted without change, Laws, 2005, ch. 375, § 2; Laws, 2007, ch. 309, § 37; reenacted and amended, Laws, 2009, ch. 556, § 2; reenacted without change, Laws, 2011,

ch. 433, § 2; Laws, 2012, ch. 416, § 2; reenacted and amended, Laws, 2015, ch. 410, § 12, eff from and after July 1, 2015.

Editor's Note — Laws of 1995, ch. 431, § 14, as amended by Laws of 2000, ch. 345, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556, § 13, and as amended by Laws of 2011, ch. 433, § 13, provided for the repeal of this section effective July 1, 2015. The language providing for the repeal of this section was subsequently deleted by Laws of 2015, ch. 410, § 22, effective July 1, 2015.

Cross References — Emergency licenses, see § 73-59-7.

Violations, penalties, see § 73-59-9.

§ 73-59-5. Application for examination and license; fee; examination and other factors considered in licensing; record of examination; reexamination; applicant to disclose other states in which licensed.

Any corporation, partnership or individual seeking to be licensed and examined under this chapter shall file with the board a written application on such form as may be prescribed by the board. Such application shall be accompanied by the payment of the license fee. If the application sufficiently contains the information required pursuant to this chapter, the applicant shall be examined by the board at its next meeting using a uniform written examination prescribed by the board. The board shall administer an oral examination to applicants who are unable to take the written examination. In addition, the board, in examining such applicant, shall consider the following:

(a) Experience;

(b) Complaints; and

(c) Other pertinent information the board may require.

If, as a result of the examination, the board finds that the applicant is qualified to engage in residential construction or residential improvement in Mississippi, the applicant shall be issued a license. Any applicant rejected by the board shall be given the opportunity to be reexamined at the next regularly scheduled examination date after a new application has been filed and the license fee has again been paid.

The board shall make and preserve a record of each examination of an applicant and the findings of the board pertaining to such examination. A certified copy of such record, omitting confidential test questions, shall be furnished to the applicant so requesting such record upon the payment of a fee to the board that reasonably reflects the cost of furnishing such record to the applicant.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

Each application for a license under this chapter shall reveal any other states in which the applicant or any partner or business associate of the applicant is licensed and whether the applicant, partner or business associate has had a license revoked or suspended in any other state. If the applicant fails to provide this information, the board may deny or revoke the applicant's license. If the applicant has had a license revoked in another state, the board may deny the application for a license in this state.

SOURCES: Laws, 1993, ch. 534, § 3; reenacted, Laws, 1995, ch. 431, § 3; Laws, 1997, ch. 588, § 67; Laws, 1998, ch. 535, § 2; reenacted and amended, Laws, 2000, ch. 345, § 3; Laws, 2004, ch. 358, § 3; reenacted without change, Laws, 2005, ch. 375, § 3; reenacted without change, Laws, 2009, ch. 556, § 3; reenacted without change, Laws, 2011, ch. 433, § 3; reenacted and amended, Laws, 2015, ch. 410, § 13, eff from and after July 1, 2015.

Editor's Note — Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Laws of 1995, ch. 431, § 14, as amended by Laws of 2000, ch. 345, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556, § 13, and as amended by Laws of 2011, ch. 433, § 13, provided for the repeal of this section effective July 1, 2015. The language providing for the repeal of this section was subsequently deleted by Laws of 2015, ch. 410, § 22, effective July 1, 2015.

§ 73-59-7. Emergency licenses; fee.

In the event of a catastrophe or emergency which arises out of a disaster, act of God, riot, civil commotion, conflagration or other similar occurrence, the board, upon application, may issue an emergency license to persons who are residents or nonresidents of this state and who may or may not be otherwise licensed residential builders or remodelers. Such emergency license shall remain in force for a period not to exceed ninety (90) days, unless extended for an additional period of ninety (90) days by the board or until a contract to build or remodel entered into during the period of the emergency license has been completed.

Within five (5) days of any applicant beginning work as a residential builder or remodeler under this section, the employer or person contracting with such person shall certify to the board such application without being deemed in violation of this chapter, provided that the board, after notice and hearing, may take disciplinary action or revoke the emergency license upon grounds as otherwise contained in this chapter providing for such disciplinary action or revocation of a residential builder's or remodeler's license.

The fee for an emergency license shall be in an amount not to exceed Fifty Dollars ($50.00) as determined by the board and shall be due and payable at the time of the issuance of such emergency license.

SOURCES: Laws, 1993, ch. 534, § 4; reenacted, Laws, 1995, ch. 431, § 4; reenacted without change, Laws, 2000, ch. 345, § 4; reenacted without change, Laws, 2005, ch. 375, § 4; reenacted without change, Laws, 2009, ch. 556, § 4; reenacted without change, Laws, 2011, ch. 433, § 4; reenacted without change, Laws, 2015, ch. 410, § 14, eff from and after July 1, 2015.

Editor's Note — Laws of 1995, ch. 431, § 14, as amended by Laws of 2000, ch. 345, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556,

§ 13, and as amended by Laws of 2011, ch. 433, § 13, provided for the repeal of this section effective July 1, 2015. The language providing for the repeal of this section was subsequently deleted by Laws of 2015, ch. 410, § 22, effective July 1, 2015.

Cross References — Revocation of license and other disciplinary actions, see § 73-59-13.

§ 73-59-9. Violations in connection with licensing; penalties; builder or remodeler without license may not bring certain actions.

(1) Any residential builder who undertakes or attempts to undertake the business of residential construction without having a valid license as required by this chapter, or who knowingly presents to the board, or files with the board, false information for the purpose of obtaining such license, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than One Hundred Dollars ($100.00) and not more than Five Thousand Dollars ($5,000.00) or be imprisoned for not less than thirty (30) nor more than sixty (60) days in the county jail, or both.

(2) Any remodeler who undertakes or attempts to undertake the business of residential improvement without having a valid license as required by this chapter, or who knowingly presents to the board, or files with the board, false information for the purpose of obtaining such license, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than One Hundred Dollars ($100.00) and not more than Five Thousand Dollars ($5,000.00) or be imprisoned for not less than thirty (30) nor more than sixty (60) days in the county jail, or both.

(3) A residential builder or remodeler who does not have the license provided by this chapter may not bring any action, either at law or in equity, to enforce any contract for residential building or remodeling or to enforce a sales contract.

(4) The board shall have the authority to issue a citation and may stop work of a residential builder or remodeler performing work without having a valid license as required by this chapter.

SOURCES: Laws, 1993, ch. 534, § 5; reenacted, Laws, 1995, ch. 431, § 5; reenacted without change, Laws, 2000, ch. 345, § 5; reenacted without change, Laws, 2005, ch. 375, § 5; reenacted without change, Laws, 2009, ch. 556, § 5; reenacted without change, Laws, 2011, ch. 433, § 5; reenacted and amended, Laws, 2015, ch. 410, § 15, eff from and after July 1, 2015.

Editor's Note — Laws of 1995, ch. 431, § 14, as amended by Laws of 2000, ch. 345, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556, § 13, and as amended by Laws of 2011, ch. 433, § 13, provided for the repeal of this section effective July 1, 2015. The language providing for the repeal of this section was subsequently deleted by Laws of 2015, ch. 410, § 22, effective July 1, 2015.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.
2. Remodeler barred from recovery.
3. Licensed builder.

1. In general.

In homeowner's action seeking to declare a construction contract null and void, the trial court erred in releasing a construction lien and dismissing a corporation's counterclaim for breach of contract because Miss. Code Ann. § 73-59-9(3) did not bar the counterclaim and lien when the corporation became licensed two months prior to the start of the litigation and four months before its counterclaim was filed; the plain language of § 73-59-9(3) requires only that a residential builder obtain a license prior to bringing an action and does not require that a residential builder be licensed at the time of performance or at the time the cause of action accrued, and once a license has been obtained, the disqualification is removed, and an action may be brought to enforce a residential building or sales contract, regardless of whether the contract was made before or after the license was acquired. Lutz Homes, Inc. v. Weston, 19 So. 3d 60 (Miss. 2009).

2. Remodeler barred from recovery.

Circuit court erred in affirming a county court's decision to award a roofer damages on his breach of contract claim against a homeowner on the ground that the roofer acted as the homeowner's agent or construction manager because the roofer acted as a general contractor, not as an agent or construction manager, when he testified that (1) he temporarily preserved the homeowner's roof while the house was being repaired, (2) he did not have much contact with the homeowner, (3) he hired, fired, and paid the subcontractors, (4) he performed some of the repairs and maintenance on the home, and (5) he dealt with everything on behalf of the homeowner, including paying subcontractors out of his pocket; the roofer acted as a remodeler within the meaning of Miss. Code Ann. § 73-59-1(c) and was barred from recovery by Miss. Code Ann. § 73-59-9(3) because he did so without a license. Puckett v. Gordon, 16 So. 3d 764 (Miss. Ct. App. 2009).

3. Licensed builder.

Residential builder's corporate entity, the corporation, did not have a builder's license, and thus, it was prohibited from performing residential construction. Miss. Code Ann. § 73-59-9(3) (Rev. 2008); however, the builder did have a valid builder's license, which was obtained in her individual capacity, and thus, the builder, in her individual capacity, was the licensed builder of the house. Since the builder was the licensed builder and the corporation was legally prohibited from performing residential construction, the appellate court could not find that the trial court erred in declining to dismiss the builder, individually, from the suit; the jury clearly found that the builder was personally liable for the construction of the home. J. Criss Builder, Inc. v. White, 35 So. 3d 541 (Miss. Ct. App. 2009), writ of certiorari denied en banc by 34 So. 3d 1176, 2010 Miss. LEXIS 266 (Miss. 2010).

§ 73-59-11. Additional duties of board.

The board shall have the following additional duties for the purposes of this chapter:

(a) To conduct thorough investigations of all applicants seeking a license or licensees seeking renewal of their licenses and of all complaints filed with the board concerning the performance of a residential builder.

(b) To obtain information concerning the responsibility of any applicant for a license or of a licensee. Such information may be obtained by investigation, by hearings, or by any other reasonable and lawful means. The board shall keep such information appropriately filed.

(c) To maintain a list of residential builders and remodelers to whom licenses are issued, refused, revoked or suspended, which list shall be available to any interested person.

(d) To prepare annually a complete roster that shows all the names and places of business of the residential builders and remodelers licensed by the board during the preceding year and to forward a copy of the roster to each municipality and county in the state and to file the roster with the Secretary of State.

(e) To take disciplinary actions pursuant to the provisions of Section 73-59-13.

(f) To adopt rules and regulations governing disciplinary actions and the conduct of its hearings and to adopt such other rules and regulations as the board finds necessary for the proper administration of this chapter.

(g) The board may require continuing education for any residential builder or remodeler licensed under this chapter; provided, however, that any residential builder or remodeler who has held a valid license under this chapter before July 1, 2015, shall be exempt from any continuing education requirements. No more than two (2) hours of continuing education shall be required by the board per year.

The holder of a valid license shall disclose to the owner or other person with whom the holder is contracting at the signing of a contract or the initial agreement to perform work whether the holder carries general liability insurance. The disclosure shall be written, the structure and composition of which shall be determined by the State Board of Contractors, and shall be placed immediately before the space reserved in the contract for the signature of the purchaser. The disclosure shall be boldfaced and conspicuous type which is larger than the type of the remaining text of the contract.

SOURCES: Laws, 1993, ch. 534, § 6; reenacted, Laws, 1995, ch. 431, § 6; Laws, 1998, ch. 535 § 3; reenacted and amended, Laws, 2000, ch. 345, § 6; reenacted without change, Laws, 2005, ch. 375, § 6; Laws, 2010, ch. 364, § 2; reenacted without change, Laws, 2011, ch. 433, § 6; reenacted and amended, Laws, 2015, ch. 410, § 16, eff from and after July 1, 2015.

Editor's Note — Laws of 1995, ch. 431, § 14, as amended by Laws of 2000, ch. 345, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556, § 13, and as amended by Laws of 2011, ch. 433, § 13, provided for the repeal of this section effective July 1, 2015. The language providing for the repeal of this section was subsequently deleted by Laws of 2015, ch. 410, § 22, effective July 1, 2015.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. Trials 493, Structural Damage to Residential Buildings.

§ 73-59-13. Charges of misconduct; disciplinary action; investigation; notice and hearing; subpoena; procedure; decision and powers of board; penalties; appeals.

(1) The board, upon satisfactory proof and in accordance with the provisions of this chapter and the regulations of the board pertaining thereto, is authorized to take the disciplinary actions provided for in this section against any person for any of the following reasons:

(a) Violating any of the provisions of this chapter or the rules or regulations of the board pertaining to the work of residential building or residential improvement;

(b) Fraud, deceit or misrepresentation in obtaining a license;

(c) Gross negligence or misconduct;

(d) Engaging in work of residential building or residential improvement on an expired license or while under suspension or revocation of license unless the suspension or revocation be abated in accordance with this chapter;

(e) Loaning a license to an unlicensed person;

(f) Failing to maintain workers' compensation insurance, if applicable; or

(g) Failing to pay for goods or services for which the builder is contractually bound.

(2) Any person, including members of the board, may prefer charges against any other person for committing any of the acts set forth in subsection (1) of this section. Such charges shall be sworn to, either upon actual knowledge or upon information and belief, and shall be filed with the board.

The board shall investigate all charges filed with it and, upon finding reasonable cause to believe that the charges are not frivolous, unfounded or filed in bad faith, may, in its discretion, cause a hearing to be held, at a time and place fixed by the board, regarding the charges and may compel the accused by subpoena to appear before the board to respond to such charges.

The board may send a certified inspector to inspect the building or structure which is the subject of a complaint or the board may use a county certified building inspector from the county where the building or structure is located to inspect the building or structure which is the subject of a complaint. The report of the inspector shall be used in the investigation and the determination of the board. The provisions above shall only apply to hearings.

No disciplinary action may be taken until the accused has been furnished both a statement of the charges against him and notice of the time and place of the hearing thereon, which shall be personally served on such accused or mailed by certified mail, return receipt requested, to the last known business or residence address of the accused not less than thirty (30) days prior to the date fixed for the hearing. The complaining party shall be notified of the place and time of the hearing by mail to the last known business or residence address of the complaining party not less than thirty (30) days prior to the date fixed for the hearing.

(3) At any hearing held hereunder, the board shall have the power to subpoena witnesses and compel their attendance and may also require the production of books, papers, documents or other materials which may be pertinent to the proceedings. The board may designate or secure a hearing officer to conduct the hearing. All evidence shall be presented under oath, which may be administered by any member of the board, and thereafter the proceedings may, if necessary, be transcribed in full by a court reporter and filed as part of the record in the case. Copies of such transcriptions may be provided to any party to the proceedings at a price reflecting actual cost, to be fixed by the board.

All witnesses who are subpoenaed and appear in any proceedings before the board shall receive the same fees and mileage as allowed by law to witnesses in county, circuit and chancery court pursuant to Section 25-7-47, Mississippi Code of 1972, and all such fees shall be taxed as part of the costs in the case.

When, in any proceeding before the board, any witness shall fail or refuse to attend upon subpoena issued by the board, shall refuse to testify, or shall refuse to produce any books and papers the production of which is called for by the subpoena, the attendance of such witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

The accused and the complaining party shall have the right to be present at the hearing in person, by counsel or other representative, or both. The board is authorized for proper cause to continue or recess the hearing as may be necessary.

(4) At the conclusion of the hearing, the board may either decide the issue at that time or take the case under advisement for further deliberation. The board shall render its decision not more than ninety (90) days after the close of the hearing and shall forward to the last known business or residence address of the accused, by certified mail, return receipt requested, a written statement of the decision of the board.

(5) If a majority of the board finds the accused guilty of the charges filed, the board may:

(a) Issue a public or private reprimand;

(b) Suspend or revoke the license of the accused;

(c) Order completion of an additional educational requirement prescribed by the board not to exceed two (2) hours per violation; or

(d) In lieu of or in addition to any reprimand, suspension, revocation, or education requirement, assess and levy upon the guilty party a monetary penalty of not less than One Hundred Dollars ($100.00) nor more than Five Thousand Dollars ($5,000.00) for each violation.

(6) A monetary penalty assessed and levied under this section shall be paid to the board upon the expiration of the period allowed for appeal of such penalties under this section or may be paid sooner if the guilty party elects.

Money collected by the board under this section shall be deposited to the credit of the State Board of Contractors Fund.

When payment of a monetary penalty assessed and levied by the board in accordance with this section is not paid when due, the board shall have the power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county of residence of the delinquent party; however, if the delinquent party is a nonresident of the State of Mississippi, such proceedings shall be in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(7) When the board has taken a disciplinary action under this section, the board may, in its discretion, stay such action and place the guilty party on probation for a period not to exceed one (1) year upon the condition that such party shall not further violate either the laws of the State of Mississippi pertaining to the practice of residential construction or residential remodeling or the bylaws, rules or regulations promulgated by the board.

(8) The board shall not assess any of the costs of disciplinary proceedings conducted pursuant to this section against the prevailing party.

(9) The power and authority of the board to assess and levy the monetary penalties provided for in this section shall not be affected or diminished by any other proceedings, civil or criminal, concerning the same violation or violations except as provided in this section.

(10) The board, for sufficient cause, may reissue a revoked license whenever a majority of the board members vote to do so.

(11) Within ten (10) days after any order, judgment or action of the board, any person aggrieved thereby may appeal such order, judgment or action either to the chancery court of the county wherein the appellant resides or to the Chancery Court of the First Judicial District of Hinds County, Mississippi, upon giving bond with sufficient security in the amount of Two Hundred Fifty Dollars ($250.00), approved by the clerk of the chancery court and conditioned to pay any costs which may be adjudged against such person. In lieu of the bond, the appellant may post Two Hundred Fifty Dollars ($250.00) with the clerk of the chancery court and conditioned to pay any costs which may be adjudged against such person.

Notice of appeal shall be filed in the office of the clerk of the chancery clerk, who shall issue a writ of certiorari directed to the board commanding it within forty-five (45) days after service thereof to certify to such court its entire record in the matter in which the appeal has been taken. The appeal shall thereupon be heard in due course by the court, and the court shall review the record and shall affirm or reverse the judgment. If the judgment is reversed, the chancery court or chancellor shall render such order or judgment as the board ought to have rendered, and certify the same to the board; and costs shall be awarded as in other cases.

Appeals may be had to the Supreme Court of the State of Mississippi as provided by law from any final action of the chancery court. The board may employ counsel to defend all such appeals, to be paid out of the funds in the State Board of Contractors Fund.

On appeal, any order, judgment or action of the board revoking a certificate of responsibility or residential license shall remain in full force unless the chancery court or Supreme Court reverses such order, judgment or action of the board.

The remedies provided under this chapter for any aggrieved person shall not be exclusive, but shall be cumulative of and supplemental to any other remedies which he may otherwise have in law or in equity, whether by injunction or otherwise.

(12) Any political subdivision or agency of this state which receives a complaint against a residential builder or remodeler shall, in addition to exercising whatever authority such political subdivision or agency has been given over such complaint, forward the complaint to the board.

(13) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1993, ch. 534, § 7; reenacted and amended, Laws, 1995, ch. 431, § 7; reenacted and amended, Laws, 2000, ch. 345, § 7; reenacted without change, Laws, 2005, ch. 375, § 7; reenacted without change, Laws, 2009, ch. 556, § 7; reenacted without change, Laws, 2011, ch. 433, § 7; reenacted and amended, Laws, 2015, ch. 410, § 17, eff from and after July 1, 2015.

Editor's Note — Laws of 1995, ch. 431, § 14, as amended by Laws of 2000, ch. 345, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556, § 13, and as amended by Laws of 2011, ch. 433, § 13, provided for the repeal of this section effective July 1, 2015. The language providing for the repeal of this section was subsequently deleted by Laws of 2015, ch. 410, § 22, effective July 1, 2015.

Cross References — Revocation and other disciplinary actions with respect to emergency licenses, see § 73-59-7.

Suspension of state issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. Trials 493, Structural Damage to Residential Buildings.

§ 73-59-15. Persons and matters exempt.

(1) This chapter shall not apply to:

(a) Agricultural buildings, buildings used for agricultural purposes, buildings constructed as a community effort, or tenant houses;

(b) Any person who undertakes construction or improvement on his own residence, or who acts as his own general contractor in the performance of construction or improvement on his own residence;

(c) Any person who undertakes residential construction or improvement, or who acts as a general contractor in the performance of residential construction or improvement, or who acts under supervision of the owner-occupant with respect to residential construction or improvement, when the owner of such construction or improvement is related to such person by consanguinity or direct affinity;

(d) The owners of property who supervise, superintend, oversee, direct or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down or maintenance of any building, railroad, excavation, project, development, improvement, plant facility or any other construction undertaking on such property for use by such owner and which will not be for sale, rent, public use or public assembly;

(e) Any contractor holding a valid license or certificate of responsibility for general construction from the board;

(f) Any nonresident contractor holding a valid license or certificate of responsibility for general construction;

(g) Any person who constructs two (2) single residences or less within a period of one (1) year in any county or municipality which does not require a building permit or any local certification for such construction, provided that the person is not building the residences for sale.

(2) A person specified in subsection (1)(b) or (c) shall not make more than two (2) applications for a permit to construct a single residence or shall not construct more than two (2) single residences within a period of one (1) year. There shall be a rebuttable presumption that such person intends to construct for the purpose of sale, lease, rent or any similar purpose if more than two (2) applications are made for a permit to construct a single residence or if more than two (2) single residences are constructed within a period of one (1) year.

SOURCES: Laws, 1993, ch. 534, § 8; reenacted and amended, Laws, 1995, ch. 431, § 8; Laws, 1998, ch. 535, § 4; reenacted and amended, Laws, 2000, ch. 345, § 8; reenacted without change, Laws, 2005, ch. 375, § 8; reenacted without change, Laws, 2009, ch. 556, § 8; reenacted without change, Laws, 2011, ch. 433, § 8; Laws, 2012, ch. 416, § 3; reenacted and amended, Laws, 2015, ch. 410, § 18, eff from and after July 1, 2015.

Editor's Note — Laws of 1995, ch. 431, § 14, as amended by Laws of 2000, ch. 345, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556, § 13, and as amended by Laws of 2011, ch. 433, § 13, provided for the repeal of this section effective July 1, 2015. The language providing for the repeal of this section was subsequently deleted by Laws of 2015, ch. 410, § 22, effective July 1, 2015.

ATTORNEY GENERAL OPINIONS

Persons who build "spec" homes or other improvements on their own real estate holdings are exempt from the Residential Builders and Remodelers Act as long as they do not apply more than twice for a permit to construct a residence, or actually construct more than two residences, within a one-year period. Cardin, November 20, 1998, A.G. Op. #98-0652.

§ 73-59-17. Denial of permit to persons not duly licensed; reporting of violations.

The building official, or other authority charged with the duty of issuing building or similar permits, of any municipality or county, shall refuse to issue a permit for any undertaking which would classify the applicant as a residential builder or remodeler under this chapter unless the applicant has furnished evidence that he is either licensed as required by this chapter or exempt from the requirements of this chapter. The building official, or other authority charged with the duty of issuing building or similar permits, shall also report to the board the name and address of any person who, in his opinion, has violated this chapter by accepting, or contracting to accomplish, work which would classify the person as a residential builder or remodeler under this chapter without a license or acknowledgement.

SOURCES: Laws, 1993, ch. 534, § 9; reenacted, Laws, 1995, ch. 431, § 9; reenacted without change, Laws, 2000, ch. 345, § 9; reenacted without change, Laws, 2005, ch. 375, § 9; reenacted without change, Laws, 2009, ch. 556, § 9; reenacted without change, Laws, 2011, ch. 433, § 9; reenacted without change, Laws, 2015, ch. 410, § 19, eff from and after July 1, 2015.

Editor's Note — Laws of 1995, ch. 431, § 14, as amended by Laws of 2000, ch. 345, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556, § 13, and as amended by Laws of 2011, ch. 433, § 13, provided for the repeal of this section effective July 1, 2015. The language providing for the repeal of this section was subsequently deleted by Laws of 2015, ch. 410, § 22, effective July 1, 2015.

JUDICIAL DECISIONS

1. No violation.

City did not violate the statute because it properly issued a contractor license when the permit for the homeowners' residence was first issued. City of Tupelo v. McMillin, 192 So. 3d 948 (Miss. 2016).

§ 73-59-19. Licensee may work on certain commercial structures without additional license.

Any residential builder licensed pursuant to the provisions of this chapter may, without being required to obtain an additional license under any other law of this state, construct, improve, repair, remodel or renovate any commercial structure, provided the prescribed contract job does not exceed seven thousand five hundred (7,500) square feet.

SOURCES: Laws, 1993, ch. 534, § 10; reenacted, Laws, 1995, ch. 431, § 10; reenacted without change, Laws, 2000, ch. 345, § 10; reenacted without change, Laws, 2005, ch. 375, § 10; reenacted without change, Laws, 2009, ch. 556, § 10; reenacted without change, Laws, 2011, ch. 433, § 10; reenacted and amended, Laws, 2015, ch. 410, § 20, eff from and after July 1, 2015.

Editor's Note — Laws of 1995, ch. 431, § 14, as amended by Laws of 2000, ch. 345, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556, § 13, and as amended by Laws of 2011, ch. 433, § 13, provided for the repeal of this section effective July 1, 2015. The language providing for the repeal of this section was subsequently deleted by Laws of 2015, ch. 410, § 22, effective July 1, 2015.

ATTORNEY GENERAL OPINIONS

It is apparent from the language found in this section that the legislature intended licensed residential builders or remodelers be exempt from the requirement of § 31-3-15 provided that the commercial project did not exceed 7500 square feet. Hill, Dec. 11, 2003, A.G. Op. 03-0241.

§ 73-59-21. Standing Committee on Residential Builders and Remodelers; appointment; quorum; powers.

(1) There is hereby created the Standing Committee on Residential Builders and Remodelers which shall be subordinate to the State Board of Contractors as set forth in Section 31-3-3. The standing committee shall be composed of the two (2) residential builders who serve as members of the State Board of Contractors and three (3) additional residential builders as defined in Section 73-59-1 to be appointed by the Governor. The terms of the ex officio members shall be concurrent with their terms as members of the State Board of Contractors. The initial terms of the three (3) additional residential builders on the Standing Committee on Residential Builders and Remodelers shall be one (1), three (3) and five (5) years, respectively, beginning July 1, 2000. Upon the expiration of the initial term of any member not serving ex officio, his or her successor shall be appointed for a term of five (5) years.

(2) The Governor shall appoint one (1) of the two (2) ex officio members as Chairman of the Standing Committee on Residential Builders and Remodelers. The Executive Director of the State Board of Contractors as set forth in Section 31-3-11 shall serve as secretary of the standing committee. The standing committee shall meet no less than once per quarter of each year at a date and time to be set by its chairman upon at least five (5) business days

notice by regular mail. The members of the standing committee shall be entitled to receive a per diem as provided in Section 31-3-9.

(3) Three (3) members of the Standing Committee on Residential Builders and Remodelers shall constitute a quorum and a majority vote of those present and voting at any meeting shall be necessary to transact business.

(4) The Standing Committee on Residential Builders and Remodelers shall have the power to make recommendations to the State Board of Contractors pertaining to all duties set forth in Sections 73-59-11 and 73-59-13. The standing committee shall have only the power to make recommendations to the State Board of Contractors and the State Board of Contractors shall have the power and authority to accept or reject any recommendation made by the standing committee. Hearings regarding residential builders and remodelers shall be exclusively under the jurisdiction of the Standing Committee on Residential Builders and Remodelers.

SOURCES: Laws, 2000, ch. 345, § 13; Laws, 2015, ch. 410, § 21, eff from and after July 1, 2015.

Editor's Note — Laws of 1995, ch. 431, § 14, as amended by Laws of 2005, ch. 375, § 13, as amended by Laws of 2009, ch. 556, § 13, and as amended by Laws of 2011, ch. 433, § 13, provided for the repeal of this section effective July 1, 2015. The language providing for the repeal of this section was subsequently deleted by Laws of 2015, ch. 410. § 22.

CHAPTER 60

Home Inspectors

Sec.
73-60-1. Definitions.
73-60-3. Administration and enforcement of chapter by Mississippi Real Estate Commission; powers and duties of commission.
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73-60-11. Licensing requirements and qualifications.
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73-60-29. Licensing fees; Home Inspectors License Fund.
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73-60-33. Disciplinary actions; proceedings.
73-60-35. Revocation or suspension of license.
73-60-37. Commission to maintain roster of licensees.
73-60-39. Qualification for license without examination.
73-60-41. Public disclosure of information in registration or renewal application.
73-60-43. Provisions of chapter may not be waived.
73-60-45. Commission authorized to employ legal counsel.

§ 73-60-1. Definitions.

The following words shall have the meaning ascribed in this section unless the context clearly indicates otherwise:

(a) "Client" means any person who engages or seeks to engage the services of a home inspector for the purpose of obtaining an inspection of and written report on the conditions of a residential building.

(b) "Home inspection" means the process by which a home inspector examines the observable systems and components of improvements to residential real property that are readily accessible.

(c) "Home inspection report" means a written evaluation prepared and issued by a home inspector concerning the condition of the improvements to residential real property.

(d) "Home inspector" means any person, who for compensation, conducts a home inspection.

(e) "Residential real property" means a structure intended to be, or that is in fact, used as a residence and consisting of one (1) to four (4) family dwelling units.

(f) "Commission" means the Mississippi Real Estate Commission as established under Section 73-35-5, Mississippi Code of 1972.

SOURCES: Laws, 2001, ch. 539, § 2; Laws, 2013, ch. 442, § 1; reenacted without change, Laws, 2017, ch. 389, § 1, eff from and after July 1, 2017.

Editor's Note — Laws of 2013, ch. 442, § 8, which contained a repealer for this section, effective July 1, 2017, was amended by Laws of 2017, ch. 389, § 7, to delete the repealer.

Amendment Notes — The 2017 amendment reenacted the section without change.

Cross References — Licensing and certification of real estate appraisers, see § 73-34-1 et seq.

Licensing of real estate brokers, see § 73-35-1 et seq.

Mississippi Real Estate Commission, see § 73-35-5.

§ 73-60-3. Administration and enforcement of chapter by Mississippi Real Estate Commission; powers and duties of commission.

This chapter shall be administered and enforced by the Mississippi Real Estate Commission, which shall have the duties and powers to:

(a) Receive applications for licensure as a home inspector under this chapter, establish appropriate administrative procedures for the processing of applications and issue licenses to qualified applicants pursuant to the provisions of this chapter;

(b) Implement recommendations made to the commission with respect to upgrading and improving the experience, education and examination requirements that are required for a home inspector license;

(c) Adopt and publish a code of ethics and standards of practice for persons licensed under this chapter;

(d) Collect all licensing fees required or permitted by this chapter;

(e) Take appropriate action upon a decision and the related findings of fact made by the commission, or a hearing officer employed by the commission, if, after an administrative hearing, the commission or hearing officer (i) determines that a licensed home inspector under this chapter has violated the code of ethics and standards established under this section, and (ii) recommends that the license of the home inspector be suspended or revoked, that renewal be denied, or that some other disciplinary action be taken;

(f) Develop and adopt a licensing examination, which would meet nationally recognized standards, to determine the knowledge of an applicant of the home inspector profession;

(g) Solicit bids and enter into contracts with one (1) or more educational testing services or organizations approved by the board for the preparation of questions and answers for licensure examinations under this chapter;

(h) Develop the application and license forms;

(i) Adopt rules and regulations for the administration of this chapter that are not inconsistent with the provisions of this chapter or the Constitution and laws of Mississippi or of the United States;

(j) Employ an assistant to the commission administrator who shall keep a record of all proceedings, transactions, communications and official acts of the commission and perform such other duties as the commission may require; and

(k) Employ such other staff and technical assistance as may be necessary to properly administer the requirements of this chapter.

SOURCES: Laws, 2001, ch. 539, § 2; Laws, 2013, ch. 442, § 2; reenacted without change, Laws, 2017, ch. 389, § 2, eff from and after July 1, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (e). The word "license" was changed to 'licensed' so that "... a license home administrator under this chapter ..." now reads as "...a licensed home administrator under this chapter ..." The Joint Committee ratified the correction at its August 5, 2008 meeting.

Editor's Note — Laws of 2013, ch. 442, § 8, which contained a repealer for this section, effective July 1, 2017, was amended by Laws of 2017, ch. 389, § 7, to delete the repealer.

Amendment Notes — The 2017 amendment reenacted the section without change.

Cross References — Mississippi Real Estate Commission, see § 73-35-5.

Standards of practice and code of ethics, see § 73-60-17.

Fees, see § 73-60-29.

Disposition of fees charged and collected under this chapter, see § 73-60-29.

§ 73-60-5. Repealed.

Repealed by Laws of 2013, ch. 442, § 7, effective from and after July 1, 2013.

§ 73-60-5. [Laws, 2001, ch. 539, § 3; Laws, 2006, ch. 356, § 1, eff from and after July 1, 2006.]

Editor's Note — Former § 73-60-5 created the Home Inspector Regulatory Board and provided for the board's membership and duties.

§ 73-60-7. Powers and duties of Mississippi Real Estate Commission; civil and criminal immunity.

(1) The Mississippi Real Estate Commission shall have the duties and powers to:

(a) Be responsible for matters relating to home inspectors' code of ethics and standards, home inspector qualifications, testing standards and disciplinary functions.

(b) Hold meetings, public hearings and administrative hearings and prepare examination specifications for licensed home inspectors.

(c) Conduct investigations, subpoena individuals and records, administer oaths, take testimony and receive evidence and to do all other things necessary and proper to discipline a person licensed under this chapter and to enforce this chapter. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Chancery Court of the First Judicial District of

Hinds County, Mississippi, upon application by the commission, may issue to this person an order requiring him to appear before the commission, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as contempt of court.

(d) Further define by regulation, the type of educational experience, home inspector experience and equivalent experience that will meet the statutory requirements.

(e) Suspend or revoke licenses pursuant to the disciplinary proceedings provided for in this chapter.

(f) Present an annual budget to the Mississippi Legislature for approval. A copy of the budget shall be given to the commission.

(2) The members of the commission shall be immune from any civil action or criminal prosecution for initiating or assisting in any lawful investigation of the actions of, or participating in any disciplinary proceeding concerning, a home inspector licensed pursuant to this chapter, provided that such action is taken without malicious intent and in the reasonable belief that the action was taken pursuant to the powers and duties vested in the members of the commission under this chapter.

SOURCES: Laws, 2001, ch. 539, § 4; Laws, 2013, ch. 442, § 3; reenacted without change, Laws, 2017, ch. 389, § 3, eff from and after July 1, 2017.

Editor's Note — Laws of 2013, ch. 442, § 8, which contained a repealer for this section, effective July 1, 2017, was amended by Laws of 2017, ch. 389, § 7, to delete the repealer.

Amendment Notes — The 2017 amendment reenacted the section without change.

Cross References — Disciplinary proceedings, see § 73-60-33.

Revocation or suspension of license, see § 73-60-35.

§ 73-60-9. License required to transact home inspection business.

(1) No person may engage in or transact any home inspection business, or hold himself out to the public as a home inspector, or offer to engage in or transact any home inspection business in this state unless the person is licensed by the commission.

(2) No license shall be issued under the provisions of this chapter to a partnership, association, corporation, limited liability company or partnership, firm or group. However, nothing in this chapter precludes a licensed home inspector from performing home inspection for and on behalf of a partnership, association, corporation, limited liability company or partnership, firm or group or from entering into contracts or enforcing contracts as partnership, association, corporation, limited liability company or partnership, firm or group.

SOURCES: Laws, 2001, ch. 539, § 5, eff from and after July 1, 2001.

Cross References — Exemptions from licensing provisions, see § 73-60-19.
Expiration and renewal of license, see § 73-60-21.
Continuing education requirements, see § 73-60-23.
Reciprocity for nonresident home inspectors, see § 73-60-25.
Penalties for unlicensed practice of home inspection, see § 73-60-27.
Grounds for revocation or suspension of license, see § 73-60-31.
Licensing without examination, see § 73-60-39.

§ 73-60-11. Licensing requirements and qualifications.

(1) An application for an original license shall be made in writing to the commission on forms as the commission may prescribe and shall be accompanied by the required fee and proof of liability insurance and errors and omissions insurance.

(2) To qualify for a license under this chapter, a person shall:

(a) Have successfully completed high school or its equivalent;

(b) Be at least twenty-one (21) years of age;

(c) Have successfully completed an approved course of study of at least sixty (60) hours that may include field work as prescribed by the commission;

(d) Have passed an examination as prescribed by the commission; and

(e) Provide a certificate of insurance for errors and omissions and general liability insurance (in the required amounts) pursuant to Section 73-60-15.

(3) The commission must review each application for a license submitted to it and must notify each applicant that the application is either accepted or rejected. The commission must send notification of acceptance or rejections to the applicant at the address provided by the applicant in the application within thirty (30) days of receiving the application. If the application is rejected, the notice sent to the applicant must state the reasons for the rejection.

SOURCES: Laws, 2001, ch. 539, § 6, eff from and after July 1, 2001.

Cross References — Insurance required, coverage limits, see § 73-60-13.
Reciprocity for nonresident home inspectors, see § 73-60-25.
Penalties for unlicensed practice of home inspection, see § 73-60-27.
Licensing fees, see § 73-60-29.
Licensing without examination, see § 73-60-39.
Information contained in registration application is subject to public disclosure, see § 73-60-41.

§ 73-60-13. General liability insurance and errors and omissions insurance; notice of cancellation and nonrenewal; coverage limits.

(1) All home inspectors are required to carry general liability insurance and errors and omissions insurance.

(2) Such policy and certificates shall provide that cancellation or nonrenewal of the policy shall not be effective unless and until at least ten (10)

days notice of cancellation or nonrenewal has been received in writing by the commission.

(3) Insurance coverage limits shall be no less than Two Hundred Fifty Thousand Dollars ($250,000.00) for general liability and no less than Two Hundred Fifty Thousand Dollars ($250,000.00) for errors and omissions, per occurrence.

SOURCES: Laws, 2001, ch. 539, § 7, eff from and after July 1, 2001.

§ 73-60-15. Liability protections.

(1) An action by a client to recover damages for any act or omission of a home inspector relating to a home inspection that he conducts shall be commenced within three (3) years after the date a home inspection is completed or the action shall be barred. Further, a licensed home inspector shall not be liable for any latent defects that may be contained in the observable systems and components of improvements to residential real property that he has inspected and has issued a home inspection report.

(2) Any professional who is licensed by the State of Mississippi when acting within the scope of his profession and is not a licensed home inspector shall not be liable for the findings, errors, or omissions of the home inspection, provided that he has not provided physical work on the residential building; has not committed proven fraud in the real estate transaction; and has no personal or financial interest in the ownership of the residential building.

(3) Any person who in good faith or intention recommends or endorses a home inspector without compensation, remuneration, rebate, or any other form of consideration shall not be liable for the actions of that home inspector, including errors, omissions, failure to perform any contracted duties of a home inspection, or failure to meet the standards of practice, report writing standards, or code of ethics.

SOURCES: Laws, 2001, ch. 539, § 8, eff from and after July 1, 2001.

§ 73-60-17. Standards of practice and code of ethics.

(1) A licensed home inspector is required to follow the Standards of Practice and Code of Ethics as adopted and published by the commission.

(2) A home inspection report must be issued by a home inspector to a client as specified in the Standards of Practice.

SOURCES: Laws, 2001, ch. 539, § 9, eff from and after July 1, 2001.

§ 73-60-19. Exemptions from licensing provisions.

The requirements of this chapter shall not prevent the following from performing a visual inspection of a home that is within the scope of their license without further license from the board: specialty contractor, general contractor, architect, engineer, insurance adjuster, individual employed by a governmental entity, person employed by a bank, savings and loan or credit union, licensed real estate broker or salesperson, a licensed appraiser or a home builder.

SOURCES: Laws, 2001, ch. 539, § 10, eff from and after July 1, 2001.

ATTORNEY GENERAL OPINIONS

There is no exemption from licensure for registered or unregistered professional engineers to perform home inspections, as such term is defined by § 73-60-1(b). Chaney, Sept. 19, 2003, A.G. Op. 03-0502.

An individual holding himself out as a home inspector as described by § 73-60-9(1) is subject to the insurance requirements set forth in § 73-60-13. Chaney, Sept. 19, 2003, A.G. Op. 03-0502.

§ 73-60-21. Expiration and renewal of license.

Except as provided in Section 33-1-39, a license under this chapter shall expire two (2) years after its date of issuance. The commission may issue a renewal license without examination, on submission of a completed renewal application, payment of the required license renewal fee, and successful completion of continuing education requirements.

SOURCES: Laws, 2001, ch. 539, § 11; Laws, 2007, ch. 309, § 38, eff from and after passage (approved Mar. 8, 2007.)

Cross References — Continuing education requirement, see § 73-60-23.

Renewal and delinquent renewal fees, see § 73-60-29.

Grounds for refusal to renew license, see § 73-60-31.

Information contained in renewal application is subject to public disclosure, see § 73-60-41.

§ 73-60-23. Continuing education courses.

(1) Each person who applies for renewal of his license shall successfully complete home inspector continuing education courses approved by the commission at the rate of twenty (20) hours every two (2) years. No license may be renewed except upon the successful completion of the required courses or their equivalent or upon a waiver of those requirements for good cause shown as determined by the commission pursuant to rule.

(2) The commission shall establish criteria for certifying providers of continuing education for home inspectors. All such continuing education providers must be approved by the commission.

(3) Each renewal applicant shall certify, on his or her renewal application, full compliance with continuing education requirements. The provider of approval of continuing education shall retain and submit to the commission, after the completion of each course, evidence of those successfully completing the course.

SOURCES: Laws, 2001, ch. 539, § 12; Laws, 2013, ch. 442, § 4; reenacted without change, Laws, 2017, ch. 389, § 4, eff from and after July 1, 2017.

Editor's Note — Laws of 2013, ch. 442, § 8, which contained a repealer for this section, effective July 1, 2017, was amended by Laws of 2017, ch. 389, § 7, to delete the repealer.

Amendment Notes — The 2017 amendment reenacted the section without change.

Cross References — Expiration and renewal of license, see § 73-60-21.

§ 73-60-25. Reciprocity for nonresident home inspectors.

A home inspector license may be issued to a home inspector from another state who satisfies one (1) of the following requirements: (a) holds a valid certificate of certification, registration or home inspector license in good standing issued by another state, which has requirements for licensure substantially identical to those of this state, or (b) has passed the examination offered by the American Society of Home Inspectors or the National Association of Home Inspectors. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 2001, ch. 539, § 13; Laws, 2013, ch. 350, § 40, eff from and after July 1, 2013.

Comparable Laws from other States — Florida: Fla. Stat. § 468.8314.
Louisiana: La. R.S. § 37:1484.
Virginia: Va. Code Ann. § 54.1-517.2.

§ 73-60-27. Penalties for unlicensed practice of home inspection; authority of commission to investigate unlicensed activity; home repairs prohibited as part of home inspection services; additional licensing and certification requirements.

(1) On or after July 1, 2001, any person who acts as a home inspector, or holds himself out as a home inspector, without being licensed under this chapter, shall, in addition to any other penalty provided by law, be liable for an administrative fine not to exceed One Thousand Dollars ($1,000.00) for a first offense and not to exceed Five Thousand Dollars ($5,000.00) for a second or subsequent offense as determined by the commission.

(2) The commission has the authority and power to investigate any and all unlicensed activity.

(3) No licensed home inspector may perform repairs on a residential building as part of or result of the home inspection.

(4) After October 1, 2001, no person licensed under this chapter shall offer to perform or perform inspection services on new construction for a fee without having first obtained a residential home builders license from the Mississippi Board of Contractors and certification by the Southern Building Code Congress or any other national professional code organization.

SOURCES: Laws, 2001, ch. 539, § 14, eff from and after July 1, 2001.

ATTORNEY GENERAL OPINIONS

Residential home inspectors licensed prior to October 1, 2001, are not required to have a residential license and certification by the Southern Building Congress or any other national professional code organization in order to perform inspections on new construction or other residential housing; that requirement is only applicable to individuals seeking licensure on October 1, 2001 or later. Mettetal, May 10, 2002, A.G. Op. #02-0186.

§ 73-60-29. Licensing fees; Home Inspectors License Fund.

The commission shall charge and collect appropriate fees for its services under this chapter. The fees charged shall not exceed the amounts indicated below and shall be set by the commission.

LICENSURE FEES:	
Application and examination	$175.00
Initial and renewal license	$325.00
Delinquent renewal penalty	100% of renewal fee
SERVICES:	
For each change of address	$ 25.00
For each duplicate license	$ 25.00
To change status as a licensee from active to inactive	$ 25.00
For each bad check received by the commission	$ 25.00

All fees charged and collected under this chapter shall be paid by the commission at least once a week, accompanied by a detailed statement thereof, to the credit of the fund known as the "Home Inspector License Fund," hereby created in the State Treasury. All monies which are collected under this chapter shall be paid into and credited to such fund for the use of the commission in carrying out the provisions of the chapter including the payment of salaries and expenses, printing an annual directory of licensees, and for educational purposes. All interest earned on the Home Inspector License Fund shall be retained by the commission for purposes consistent with this chapter. The commission shall prepare an annual statement of income and expenses related to its regulatory related administrative function.

SOURCES: Laws, 2001, ch. 539, § 15; Laws, 2013, ch. 442, § 5; reenacted without change, Laws, 2017, ch. 389, § 5, eff from and after July 1, 2017.

Editor's Note — Laws of 2013, ch. 442, § 8, which contained a repealer for this section, effective July 1, 2017, was amended by Laws of 2017, ch. 389, § 7, to delete the repealer.

Amendment Notes — The 2017 amendment reenacted the section without change.

§ 73-60-31. Disciplinary actions; causes.

The commission may refuse to issue or to renew or may revoke or suspend a license or may place on probation, censure, reprimand, or take other disciplinary action with regard to any license issued under this chapter, including the issuance of fines for each violation, for any one (1) or combination of the following causes:

(a) Violations of this chapter or the commission's rules promulgated pursuant hereto;

(b) Violation of terms of license probation;

(c) Conviction of a felony or making a plea of guilty or nolo contendere within five (5) years prior to the date of application;

(d) Operating without adequate insurance coverage required for licensees; and

(e) Fraud in the procurement or performance of a contract to conduct a home inspection.

SOURCES: Laws, 2001, ch. 539, § 16, eff from and after July 1, 2001.

Cross References — Insurance requirement and coverage limits, see § 73-60-13.
Disciplinary actions, see § 73-60-33.
Surrender of license upon suspension or revocation, see § 73-60-35.

§ 73-60-33. Disciplinary actions; proceedings.

(1) The commission may investigate the actions of an applicant or of a person holding or claiming to hold a license upon complaint in writing of any person setting forth facts which, if proved, would constitute a violation of this chapter or rules promulgated hereunder.

(2) Whenever it appears to the commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, they may, in their discretion, seek any or all of the following remedies:

(a) When in the public interest to prevent harm to the welfare and safety of the public, issue a cease and desist order, with or without a prior hearing against the person or persons engaged in the prohibited activities, directing them to cease and desist from further illegal activity; or

(b) Bring an action in chancery court to enjoin the acts or practices to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(3) With the exception of actions authorized by subsection (2) (a) and (b) above, the commission shall, before taking any disciplinary action that it may deem proper with regard to a license, at least twenty (20) days prior to the date set for a hearing, notify the applicant or licensee in writing of any charges made and the time and place for a hearing of the charges. Such written notice may be served by personal delivery or certified or registered mail at the licensee's last known address as reflected on their licensing application.

(4) The commission shall, after a hearing, issue an order either issuing, renewing, refusing to issue or renew, reinstating, or revoking the license.

SOURCES: Laws, 2001, ch. 539, § 17, eff from and after July 1, 2001.

Cross References — Grounds for revocation or suspension of license, see § 73-60-31.

Surrender of license upon suspension or revocation, see § 73-60-35.

§ 73-60-35. Revocation or suspension of license.

(1) Upon the revocation or suspension of a license, the licensee shall immediately surrender the license to the commission. If the licensee fails to do so, the commission shall have the right to seize the license.

(2) If circumstances of suspension or revocation so indicate, the commission may require an examination of the licensee before restoring his license.

SOURCES: Laws, 2001, ch. 539, § 18, eff from and after July 1, 2001.

Cross References — Grounds for revocation or suspension of license, see § 73-60-31.

Disciplinary actions, see § 73-60-33.

Roster of names, addresses of persons whose licenses have been suspended or revoked, see § 73-60-37.

§ 73-60-37. Commission to maintain roster of licensees.

The commission shall maintain a roster of names and addresses of all licenses and of all persons whose licenses have been suspended or revoked. This roster shall be published on a web site designated by the commission. All licensees under this chapter shall inform the commission of any change in their business or home address.

SOURCES: Laws, 2001, ch. 539, § 19, eff from and after July 1, 2001.

§ 73-60-39. Qualification for license without examination.

A person already engaged in the business of performing home inspections on July 1, 2001, is allowed ninety (90) days from July 1, 2001, to comply with the provisions of this chapter for the purpose of qualifying to perform home inspections. Such person will qualify for a license without being required to take an examination if he can document to the satisfaction of the commission that he has conducted not less than twenty (20) fee-paid home inspections in the previous twelve (12) months or one hundred (100) fee-paid home inspections over his career or that he has received certification as a home inspector from a nationally recognized education center in a curriculum approved by the United States Department of Housing and Urban Development and the United States Department of Education.

SOURCES: Laws, 2001, ch. 539, § 20, eff from and after July 1, 2001.

ATTORNEY GENERAL OPINIONS

Residential home inspectors licensed prior to October 1, 2001, are not required to have a residential license and certification by the Southern Building Congress or any other national professional code organization in order to perform inspections on new construction or other residential housing; that requirement is only applicable to individuals seeking licensure on October 1, 2001 or later. Mettetal, May 10, 2002, A.G. Op. #02-0186.

§ 73-60-41. Public disclosure of information in registration or renewal application.

The information contained in or filed with any registration application or renewal application is subject to public disclosure. Information in the possession of, submitted to or obtained by the commission in connection with any investigation or examination under this chapter shall be confidential and exempt from the requirements of the Mississippi Public Records Act of 1983. No such information may be disclosed by the commission or its employees unless necessary or appropriate in connection with a particular investigation or proceeding under this chapter or for any law enforcement purpose, in the absence of an order of a court of competent jurisdiction requiring such disclosure.

SOURCES: Laws, 2001, ch. 539, § 21, eff from and after July 1, 2001.

Cross References — Public access to public records under the Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

§ 73-60-43. Provisions of chapter may not be waived.

Any condition, stipulation or provision binding any person engaging the services of a home inspector to waive compliance with any provision of this chapter or any rule or order hereunder is void.

SOURCES: Laws, 2001, ch. 539, § 22, eff from and after July 1, 2001.

§ 73-60-45. Commission authorized to employ legal counsel.

The commission may employ legal counsel to represent it in any proceedings when legal counsel is required.

SOURCES: Laws, 2001, ch. 539, § 23; Laws, 2013, ch. 442, § 6; reenacted without change, Laws, 2017, ch. 389, § 6, eff from and after July 1, 2017.

Editor's Note — Laws of 2013, ch. 442, § 8, which contained a repealer for this section, effective July 1, 2017, was amended by Laws of 2017, ch. 389, § 7, to delete the repealer.

Amendment Notes — The 2017 amendment reenacted the section without change.

CHAPTER 61

Tattooing and Body Piercing

Sec.
73-61-1. Tattooing [Repealed effective July 1, 2020].
73-61-3. Body piercing [Repealed effective July 1, 2020].

§ 73-61-1. Tattooing [Repealed effective July 1, 2020].

(1) No person shall place a tattoo upon the body of a human for compensation within the State of Mississippi without first registering with the State Department of Health. The facility or premises in which tattooing is to be performed shall be specified in the registration, and the registered person shall be authorized to perform tattooing only in the specified facility or premises. For the purposes of this section, "tattooing" means to make indelible marks or designs on or visible through the skin of a human by puncturing or pricking the skin with a needle or other instrument and inserting ink or other pigments, and "tattoo" means the indelible mark or design so produced. Registrations shall be valid for one (1) year, and each person registered under this section shall pay an annual registration fee to the department in an amount set by the department, but not to exceed One Hundred Fifty Dollars ($150.00), which fee shall be uniform for all registered persons. Any increase in the fee charged by the department under this subsection shall be in accordance with the provisions of Section 41-3-65.

(2) The State Board of Health shall promulgate rules and regulations relating to:

(a) Health, cleanliness and general sanitation of the facilities or premises in which tattooing is performed or to be performed;

(b) Sterilization of tattooing apparatus and safe disposal of tattooing apparatus;

(c) Procedures to prevent the transmission of disease or infection during or relating to tattooing procedures, specifically including, but not limited to, transmission of Hepatitis B and the human immunodeficiency virus (HIV); and

(d) Such other administrative provisions as may be necessary to protect public health or properly administer the requirements of this section.

(3) Representatives of the department may visit any facility or premises in which tattooing is performed at any time during business hours to ensure compliance with the requirements of this section and the rules and regulations promulgated under this section. Representatives of the department shall visit each facility or premises in which tattooing is performed not less than once each year to inspect for such compliance. The department may suspend or revoke the registration of any person found to be violating any of the rules or regulations promulgated under this section.

(4) It shall be unlawful for any person to place a tattoo upon the body of any person under the age of eighteen (18) years.

(5) Any person who places a tattoo upon the body of a human for compensation without first registering with the department or after his registration has been suspended or revoked by the department, or any person who places a tattoo upon the body of any person in violation of subsection (4) of this section, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00).

(6) The department is authorized to bring an action for an injunction under the provisions of Sections 73-51-1 through 73-51-5 to prohibit any person who is required to be registered under this section from performing tattooing without first registering with the department or after his registration has been suspended or revoked by the department.

(7) This section shall not apply to physicians licensed to practice medicine in Mississippi in the performance of their professional duties.

SOURCES: Laws, 1994, ch. 342, § 1; Laws, 2016, ch. 510, § 57, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added the last sentence of (1).

Cross References — Regulation of body piercing, see § 73-61-3.

RESEARCH REFERENCES

ALR. Regulation of business of tattooing. 81 A.L.R.3d 1212.

Regulation of Business of Tattooing. 67 A.L.R.6th 395.

Am Jur. 58 Am. Jur. 2d, Occupations, Trades, and Professions §§ 2, 67.

34 Am. Jur. Proof of Facts 2d 639, Contact Dermatitis.

§ 73-61-3. Body piercing [Repealed effective July 1, 2020].

(1) For the purposes of this section, the term "body piercing" means the creation of an opening in any part of the human body, other than the outer perimeter or lobe of the ear, for the purpose of inserting jewelry or other decorative object, or for some other nonmedical purpose.

(2) No person shall perform body piercing upon any person for compensation within the State of Mississippi without first registering with the State Department of Health. The facility or premises in which body piercing is to be performed shall be specified in the registration, and the registered person shall be authorized to perform body piercing only in the specified facility or premises. Except as provided in Section 33-1-39, registrations shall be valid for one (1) year, and each person registered under this section shall pay an annual registration fee to the department in an amount set by the department, but not to exceed One Hundred Fifty Dollars ($150.00), which fee shall be uniform for all registered persons. Any increase in the fee charged by the department under this subsection shall be in accordance with the provisions of Section 41-3-65.

(3) The State Board of Health shall promulgate rules and regulations relating to:

(a) Health, cleanliness and general sanitation of the facilities or premises in which body piercing is performed or to be performed;

(b) Sterilization of body piercing apparatus and safe disposal of body piercing apparatus;

(c) Procedures to prevent the transmission of disease or infection during or relating to body piercing procedures, specifically including, but not limited to, transmission of Hepatitis B and the human immunodeficiency virus (HIV); and

(d) Such other administrative provisions as may be necessary to protect public health or properly administer the requirements of this section.

(4) Representatives of the department may visit any facility or premises in which body piercing is performed at any time during business hours to ensure compliance with the requirements of this section and the rules and regulations promulgated under this section. Representatives of the department shall visit each facility or premises in which body piercing is performed not less than once each year to inspect for such compliance. The department may suspend or revoke the registration of any person found to be violating any of the rules or regulations promulgated under this section.

(5) It shall be unlawful for any person to perform body piercing upon any person under the age of eighteen (18) years.

(6) Any person who performs body piercing for compensation without first registering with the department or after his registration has been suspended or revoked by the department, or any person who performs body piercing upon any person in violation of subsection (5) of this section, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00).

(7) The department is authorized to bring an action for an injunction under the provisions of Sections 73-51-1 through 73-51-5 to prohibit any person who is required to be registered under this section from performing body piercing without first registering with the department or after his registration has been suspended or revoked by the department.

(8) This section shall not apply to physicians licensed to practice medicine in Mississippi in the performance of their professional duties.

SOURCES: Laws, 2000, ch. 347, § 1; Laws, 2007, ch. 309, § 39; Laws, 2016, ch. 510, § 58, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added the last sentence of (2).

Cross References — Regulation of tatooing, see § 73-61-1.

CHAPTER 63

Registered Professional Geologists Practice Act

Sec.
73-63-1. Title.
73-63-3. Purpose.
73-63-5. Definitions.
73-63-7. Activities requiring registration under chapter; exemptions.
73-63-9. Creation of Board of Registered Professional Geologists; composition of board; appointment; vacancies; qualifications of board members.
73-63-11. Compensation of board.
73-63-13. Removal or suspension of board members.
73-63-15. Meetings of board; election of officers.
73-63-17. Powers and duties of board.
73-63-19. Powers and duties of executive director.
73-63-21. Registered Professional Geologists Fund.
73-63-23. Maintenance of records by board.
73-63-25. Designation of Attorney General as counsel for board.
73-63-27. Qualification of registered professional geologists; requirements of geologists-in-training.
73-63-29. Form of application.
73-63-31. Examination.
73-63-33. Issuance of certificates; denial of certificates.
73-63-35. Expiration of certificates; renewal; lost or destroyed certificates.
73-63-37. Fees.
73-63-39. Recognition of out-of-state registration, licensure, or certification; reciprocal registration agreements.
73-63-41. Use of the designation "Certified Professional Geologist."
73-63-43. Grounds for disciplinary actions; disciplinary proceedings; sanctions.
73-63-45. Report of disciplinary actions.
73-63-47. Proceedings of enforcement of chapter by board.
73-63-49. Appeal to chancery court by aggrieved persons.
73-63-51. Violations of this chapter.
73-63-53. Memorandum of understanding.
73-63-55. Preference given to resident professional geologists.
73-63-57. Repealed

§ 73-63-1. Title.

This chapter shall be known and may be cited as "The Registered Professional Geologists Practice Act of 1997."

SOURCES: Laws, 1997, ch. 522, § 1, eff from and after July 1, 1997.

§ 73-63-3. Purpose.

In order to safeguard life, health, and property, and to promote the public welfare, it is in the public interest to require any person in either public or private capacity practicing or offering to practice geology to be registered, unless otherwise authorized by this chapter.

SOURCES: Laws, 1997, ch. 522, § 2, eff from and after July 1, 1997.

Cross References — Practice of geology defined, see § 73-63-5.

§ 73-63-5. Definitions.

The following words shall have the meanings ascribed in this section, unless the context clearly indicates otherwise:

(a) "Board" means the board of registered professional geologists created under this chapter.

(b) "Certified geologist" means a geologist who has been certified by a professional geologic organization, society or association, including, but not limited to, the American Association of Petroleum Geologists and the American Institute of Professional Geologists, which has certification requirements recognized by the board.

(c) "Fund" means the registered professional geologists fund created under Section 73-63-21.

(d) "Geologist" means an individual who, by reason of knowledge of geology, mathematics and the supporting physical and life sciences acquired by education and practical experience, is qualified to engage in the practice of geology.

(e) "Geologist-in-training" means an individual who has met the academic qualifications established by the board, who has successfully passed a written examination demonstrating a knowledge of the fundamentals of geology, and who has been enrolled as a geologist-in-training by the board.

(f) "Geology" means the science which includes the study of the earth and its origin and history. Geology includes the investigation of the earth's constituent rocks, minerals, solids and fluids, including surface and underground waters, gases and other materials and the study of the natural agents, forces and processes which cause changes in the earth.

(g) "Person" means any individual, trust, firm, joint stock company, public or private corporation (including a government corporation), partnership, association, state, or any agency or institution thereof, municipality, commission, political subdivision of a state or any interstate body, and includes any officer or governing or managing body of any municipality, political subdivision, or the United States or any officer or employee thereof.

(h) "Practice of geology" means any professional service to determine and evaluate the geology of the earth requiring geologic education, training, experience and the application of special knowledge of the mathematical, physical and geologic sciences to those services, including, but not limited to, consultation, investigation, evaluation, planning, surveying (unless licensed under Sections 73-13-71 through 73-13-99), mapping and inspection of geologic work.

(i) "Registered professional geologist" means a geologist who has met the academic and experience qualifications established by the board and has been issued a certificate of registration as a registered professional geologist by the board.

(j) "Registrant" means any individual who holds a certificate of registration or certificate of enrollment issued under this chapter.

(k) "Responsible charge" means the independent control and direction, by use of initiative, skill and independent judgment, of geologic work or the supervision of that work.

(*l*) "Subordinate" means any individual who assists in the practice of geology by a registered professional geologist without assuming the responsible charge of the work.

(m) "Specialty" means any branch or discipline of geology that may be recognized under this chapter or regulations promulgated by the board for certifying specialization in a specific geologic field of study or related scientific field of study, or both.

(n) "Welfare" means physical and financial welfare.

SOURCES: Laws, 1997, ch. 522, § 3; Laws, 2006, ch. 598, § 1, eff from and after July 1, 2006.

Editor's Note — Section 73-13-91 (which provided for the reissuance of certificates), included within the span of sections referenced in (h), was repealed by Laws of 1991, ch. 470, § 38, effective from and after July 1, 1991.

Section 73-13-99, included within the span of sections referenced in (h), was repealed by Laws of 2006, ch. 598, § 8, effective from and after July 1, 2006.

Cross References — Licensing of engineer's and surveyors, see §§ 73-13-1 et seq.

ATTORNEY GENERAL OPINIONS

The Mississippi State Board of Registered Professional Geologists (MSBRPG) has the sole authority to adopt regulations, consistent with Section 73-63-5(h), which identify which tasks fall within the definition of the practice of geology which, if not otherwise exempted, must be performed by a registered geologist; the MSBRPG may not expand the definition of "practice of geology" by way of regulation. Erickson, July 18, 2003, A.G. Op. 03-0312.

§ 73-63-7. Activities requiring registration under chapter; exemptions.

(1) A person shall not use the term "registered professional geologist" unless that person is registered under this chapter. Unless exempted under subsection (5) of this section, any individual practicing, offering or attempting to practice geology or claiming any specialty in geology, as a professional, business or commercial identification, title, name, representation or claim, or otherwise holding themselves out to the public, as being qualified to practice geology or any of its specialties shall be registered under this chapter.

(2) Unless exempted under subsection (5) of this section, no person other than an individual shall engage in the practice of geology unless the geologic work is performed by or under the supervision of one or more registered professional geologists, who is in responsible charge of the work and signs and seals all documents. If the principal business of the person, as determined by the board, is the practice of geology, then a principal, officer or director must be a registered professional geologist and have overall supervision and control of the geologic work performed in this state.

(3) Except as exempted under subsection (5) of this section, a person shall be construed to engage in the practice of geology or offer to practice geology under this chapter if that person:

(a) Practices any branch of geology;

(b) Represents by verbal claim, sign, advertisement, letterhead, card or any other way or implies through the use of the title "geologist" that the person is registered under this chapter;

(c) Holds himself or herself out as able to perform or does perform any geologic services or work recognized by the board as the practice of geology; or

(d) Makes geologic determinations and evaluations which may affect the public welfare, including, but not limited to, the following activities: protection of groundwater to ensure adequate quality and quantity for present and future generations; prevention and remediation of contamination of the earth, earth materials and water from improper disposal or accidental spills; determination of the suitability and risks in containment and disposal of wastes and hazardous materials, including, but not limited to, landfills, storage tanks and injection wells; siting of boreholes, depth of wells to be drilled, depth of casing and grouting requirements for the construction of monitoring wells or other borings into the earth that may affect one or more aquifers; the suitability for construction projects including excavations, buildings, dams, highways and other structures which may be affected by floods, landslides, earthquakes, sinkholes, erosion, and expansive or contractive earth and earth materials. These geologic determinations and evaluations do not include the design of structures as defined by Title 73, Chapter 13 and other engineering-related activities as clearly defined and mutually agreed upon between the Board of Registered Professional Geologists and the Board of Registration for Professional Engineers and Land Surveyors in the memorandum of understanding authorized under Section 73-63-53.

(4) Any geologic report or geologic portion of a report, which incorporates or is based on a geologic study or on geologic data and is required by or supporting compliance with any federal, state or local governmental law, ordinance, rule or regulation shall be prepared by or under the supervision of a registered professional geologist as evidenced by the geologist's signature and seal.

(5) The following activities shall not require registration under this chapter:

(a) Geologic work performed by an employee or a subordinate of a registered professional geologist, if that work does not include responsible charge of geologic work, provided that the work does not state, portray or infer by any manner or suggestion whatsoever that the employee or subordinate is in responsible charge of the geology or geologic work and that the work is performed under the direct supervision of a registered professional geologist who is responsible for that work and whose signature and seal must be conspicuously affixed thereto;

(b) Geologic work performed exclusively in the exploration for and development or proving out of petroleum resources, including the giving of testimony, or preparation and presentation of exhibits or documents regarding petroleum resources for the sole purpose of consideration by, or being placed into evidence before, any administrative agency, judicial tribunal or public hearing, if the testimony, exhibits or documents do not imply that the person is registered under this chapter;

(c) The practice of engineering, including the acquisition of engineering data and the utilization of these data in analysis, design and construction by professional engineers appropriately registered in this state;

(d) Work customarily performed by physical or natural scientists such as chemists, archaeologists, geographers, oceanographers, pedologists and soil scientists, if that work does not include the planning and execution of geologic investigations, being in responsible charge of geologic work or the drawing of geologic conclusions and making recommendations involving the practice of geology; and

(e) Geologic work which does not affect the public welfare as specified under subsection (3) (d) of this section.

(6) Nothing in this chapter shall be construed to permit the practice of engineering by a geologist.

SOURCES: Laws, 1997, ch. 522, § 4; Laws, 2006, ch. 598, § 2, eff from and after July 1, 2006.

Cross References — Licensing of engineers and land surveyors, see §§ 73-13-1 et seq.

Using term "registered professional geologist" unless registered as violation of this chapter, see § 73-63-51.

ATTORNEY GENERAL OPINIONS

Registered professional engineers may engage in practices which are within the definition of geology where those practices are either expressly within the statutory definition of engineering or incidental thereto. Brister, Mar. 14, 2003, A.G. Op. #03-0124.

The statutory exemption excludes the practice of engineering from the jurisdiction of the Board of Registered Professional Geologists, however, where activities are purely geologic in nature and are not being performed in the practice of engineering, any engineer performing those services alone and not in connection with an engineering project would not be entitled to the exemption and would require licensure by the board. Brister, Mar. 14, 2003, A.G. Op. #03-0124.

When a report is prepared by a professional engineer, if the geologic portion of a report is provided by a professional geologist, it must be signed by both the engineer and the geologist; However, if the geological data, conclusions or interpretations in the report are provided by a professional engineer during the course and scope of the practice of engineering, then only the engineer need sign the report. Brister, Mar. 14, 2003, A.G. Op. #03-0124.

When purely geologic activities are being performed outside the practice of engineering, an engineer performing those services not in connection with an engineering project would be subject to the licensing requirements of the Mississippi State Board of Registered Professional

Geologists. Ericksen, July 18, 2003, A.G. Op. 03-0312.

The Mississippi State Board of Registered Professional Geologists (MSBRPG) has the sole authority to adopt regulations, consistent with Section 73-63-5(h), which identify which tasks fall within the definition of the practice of geology which, if not otherwise exempted, must be performed by a registered geologist; the MSBRPG may not expand the definition of "practice of geology" by way of regulation. Ericksen, July 18, 2003, A.G. Op. 03-0312.

§ 73-63-9. Creation of Board of Registered Professional Geologists; composition of board; appointment; vacancies; qualifications of board members.

(1) There is created the Board of Registered Professional Geologists to administer this chapter. The board shall consist of five (5) registered professional geologists appointed by the Governor from nominees recommended by the committee created in subsection (3) of this section, but geologists initially appointed to the board shall be qualified for registration under this chapter and shall register within the first year of their term. The Governor shall require adequate disclosure of potential conflicts of interest by appointees to the board. The board shall, to the extent practicable, consist of one (1) member appointed from the governmental sector, one (1) member appointed from academia, one (1) member appointed from the geotechnical/environmental industrial sector, one (1) member appointed from the mining/mineral extraction industrial sector, and one (1) member appointed at large. The initial term of the members shall be as follows: Two (2) members shall be appointed for terms of four (4) years, two (2) members shall be appointed for terms of three (3) years, and one (1) member shall be appointed for a term of two (2) years. Following appointment of the initial board, all terms shall be for four (4) years. The term of members shall begin and end on July 1 of the appropriate year regardless of the date of appointment. Upon expiration of a member's term, the Governor may appoint a new member or may reappoint the existing member to one (1) additional term. No member of the board shall serve more than two (2) consecutive terms. Members shall hold office until their successors have been appointed and qualified. Vacancies in the membership of the board shall be filled for the unexpired term by appointment in the same manner as the original appointments. Before assuming the duties of office, each member of the board shall take the oath prescribed in Section 268 of the Constitution. Each member shall receive a certificate of appointment from the Governor. Original appointments to the board shall be made before October 1, 1997.

(2) Each member of the board shall be a citizen of the United States, a resident of this state for at least five (5) years immediately preceding that person's appointment, and at least thirty (30) years of age.

(3)(a) Except as provided in paragraph (b) of this subsection, the board annually shall appoint a nominating committee. No board member shall participate on the nominating committee during the year in which that member's term expires. The nominating committee shall compile a list of the nominees and submit that list to the registered professional geologists on the roster. Each geologist shall have one (1) vote and shall submit that vote in writing within fifteen (15) days following the mailing of the list of nominees. The executive director, or the president in the absence of an executive director, shall calculate the results and recommend to the Governor the three (3) nominees from the sector in which the vacancy occurs receiving the largest number of votes.

(b) The Task Force/Advisory Committee on Geologic Registration shall recommend fifteen (15) nominees to the Governor for appointment to the initial board.

SOURCES: Laws, 1997, ch. 522, § 5; Laws, 2006, ch. 598, § 3, eff from and after July 1, 2006.

§ 73-63-11. Compensation of board.

Each member of the board, except a state employee, shall receive per diem in accordance with Section 25-3-69 when actually attending meetings of the board or its committees. Board members shall be reimbursed for traveling expenses in accordance with Section 25-3-41. If the president of the board assumes the powers and duties under Section 73-63-19, the president shall receive per diem for each day spent executing those powers and duties. The board, by majority vote, may elect not to receive per diem compensation, which election shall be revocable.

SOURCES: Laws, 1997, ch. 522, § 6; Laws, 2006, ch. 598, § 4, eff from and after July 1, 2006.

§ 73-63-13. Removal or suspension of board members.

The Governor may remove or suspend any member of the board for any of the following causes:

(a) A member is no longer qualified for appointment to the board;

(b) Misconduct, incompetence, neglect of official duties, malfeasance or inability to perform official duties due to incapacitation;

(c) Commission of a felony or violation of this chapter resulting in disciplinary action; or

(d) Unexcused failure to attend at least one-half (½) of the regularly scheduled meetings held in a calendar year.

SOURCES: Laws, 1997, ch. 522, § 7, eff from and after July 1, 1997.

§ 73-63-15. Meetings of board; election of officers.

(1) The board shall meet within sixty (60) days after appointment of its members. The board shall hold at least two (2) regular meetings each year. Special meetings may be held at any time as provided in the rules and regulations of the board. The board shall provide notice of its meetings.

(2) The board shall elect annually from its membership a president and vice president. The president or vice president shall not hold that office for more than two (2) consecutive annual terms.

(3) A majority of the board shall constitute a quorum.

(4) The board shall keep a record of its proceedings.

SOURCES: Laws, 1997, ch. 522, § 8, eff from and after July 1, 1997.

§ 73-63-17. Powers and duties of board.

The board shall have the following powers and duties:

(a) To adopt, modify, repeal and promulgate, after due notice and hearing and in accordance with the Mississippi Administrative Procedures Law, and where not otherwise prohibited by federal or state law to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing the powers and duties of the board under this chapter, including rules governing the conduct of its business and meetings;

(b) To adopt an official seal and alter that seal at the pleasure of the board;

(c) To apply for, receive and expend any federal or state funds or contributions, gifts, devises, bequests or funds from any other source;

(d) To enter into, and to authorize the executive director to execute contracts, grants and cooperative agreements with any federal or state agency, any public or private institution, or any other person to carry out this chapter. The board shall not provide any funds for special interest groups to lobby or otherwise promote the group's special interests;

(e) To employ, in its discretion, an executive director and other qualified technical, professional and clerical personnel, including investigators and expert witnesses, as may be required for the operation of the board;

(f) To establish, charge, collect and revise reasonable and necessary fees to applicants and registrants to support the administration and enforcement of this chapter;

(g) To identify specialties and to establish qualifications, conduct examinations and issue certificates in those specialties to qualified applicants and to recognize and authorize the use of certain geologic designations;

(h) To prepare, administer and grade oral and written examinations authorized under this chapter;

(i) To issue, reissue, renew, suspend, revoke or deny the issuance, reissuance or renewal of certificates of registration or certificates of enrollment;

(j) To authorize the preparation and conduct of continuing education programs with voluntary participation;

(k) To establish standards of professional conduct;

(*l*) To investigate complaints of violations of this chapter, any rule, regulation or written order of the board, any condition of registration, or standard of professional conduct by registrants or nonregistrants, as provided in this chapter and to impose sanctions and penalties for violations, including, but not limited to, restrictions on the practice of any registrant or any other person engaged in the practice of geology;

(m) To administer oaths and affirmations, and to issue subpoenas to compel the attendance of witnesses and the production of evidence;

(n) To begin and maintain legal actions to enforce this chapter and to seek injunctions;

(o) To delegate powers, duties or responsibilities to the executive director as deemed necessary to efficiently administer this chapter; and

(p) To discharge other powers, duties and responsibilities provided under this chapter or as necessary to implement this chapter.

SOURCES: Laws, 1997, ch. 522, § 9, eff from and after July 1, 1997.

Cross References — Mississippi Administrative Procedures Law, see §§ 25-43-1.101 et seq.

Memorandum of understanding between board and any necessary agencies containing guidelines for resolving jurisdictional concerns between registered geologists and licensed engineer's or other registered or licensed professional personal, see § 73-63-53.

ATTORNEY GENERAL OPINIONS

The Mississippi State Board of Registered Professional Geologists (MSBRPG) has the sole authority to adopt regulations, consistent with Section 73-63-5(h), which identify which tasks fall within the definition of the practice of geology which, if not otherwise exempted, must be performed by a registered geologist; the MSBRPG may not expand the definition of "practice of geology" by way of regulation. Ericksen, July 18, 2003, A.G. Op. 03-0312.

§ 73-63-19. Powers and duties of executive director.

(1) If the board employs an executive director, the executive director shall have the following powers and duties:

(a) To administer the policies of the board within the authority granted by the board;

(b) To supervise and direct all administrative, technical and investigative activities of the board;

(c) To organize the administrative units of the board in accordance with a plan adopted by the board and to alter that organizational plan and reassign responsibilities with approval of the board as deemed necessary to carry out the policies of the board;

(d) To recommend to the board appropriate studies and investigations and to carry out the approved recommendations;

(e) To issue, modify or revoke any orders under authority granted by the board;

(f) To enter into contracts, grants and cooperative agreements as approved by the board with any federal or state agency, any public or private institution or any other person to carry out this chapter;

(g) To receive, administer and account for any funds received by the board;

(h) To prepare and deliver to the Legislature and the Governor before January 1 of each year, and at any other times as may be required by the board, Legislature or Governor, a full report of the work of the board, including a detailed statement of revenues and expenditures of the board and any recommendations the board may have; and

(i) To discharge other powers, duties and responsibilities as directed or delegated by the board.

(2) The executive director shall give a surety bond satisfactory to the board, conditioned upon the faithful performance of the executive director's duties. The premium on the bond shall be regarded as a proper and necessary expense of the board.

(3) If the board does not employ an executive director, the president of the board shall have the powers and duties provided in subsection (1) of this section.

SOURCES: Laws, 1997, ch. 522, § 10, eff from and after July 1, 1997.

§ 73-63-21. Registered Professional Geologists Fund.

(1) There is created in the State Treasury a fund to be designated as the "Registered Professional Geologists Fund," to be administered by the president or executive director of the board.

(2) Monies in the fund shall be utilized to pay reasonable direct and indirect costs associated with the administration and enforcement of this chapter.

(3) Expenditures from the fund may be made upon requisition by the president or executive director of the board.

(4) The fund shall be treated as a special trust fund. Interest earned on the principal shall be credited to the fund by the Treasurer.

(5) The fund may receive monies from any available public or private source, including, but not limited to, collection of fees, interest, grants, taxes, public and private donations, judicial actions and appropriated funds.

(6) Monies in the fund at the end of the fiscal year shall be retained in the fund for use in the next succeeding fiscal year.

SOURCES: Laws, 1997, ch. 522, § 11, eff from and after July 1, 1997.

Cross References — Fees, see § 73-63-37.

§ 73-63-23. Maintenance of records by board.

(1) The board shall keep the minutes of the board, including all orders, rules and regulations adopted, in a record book or books maintained for that purpose. The book or books shall be a public record and open to inspection by the public during all reasonable hours. All minutes of board meetings and hearings, and all rules, regulations and orders made by the board shall be in writing. The board shall compile and publish as necessary the rules and regulations promulgated by the board in current consolidated version. The

board shall provide the consolidated compilation of the rules and regulations to the public for a cost sufficient to cover printing, postage and administrative expenses, including the cost of any contractual services necessary to compile and publish those rules and regulations.

(2) The board shall also keep a register of all applications for registration or enrollment, which shall show:

(a) The name, residence and date of birth of the applicant;

(b) The date of the application;

(c) The name, address and telephone number of the applicant's employer;

(d) The applicant's educational and other qualifications;

(e) The name of any other state in which or any other organization by which the applicant is registered, licensed or certified and date of that action;

(f) The date of any action taken by the board regarding this applicant; and

(g) Other information deemed necessary by the board.

(3) The board shall maintain a roster showing the names and place of business or residence of all registered professional geologists. The board shall upon request provide copies of the roster to state and local governmental entities. The board shall provide copies of the roster to any other person upon written request for a cost sufficient to cover printing, postage and administrative and other expenses. In addition, the board shall maintain a roster of all geologists-in-training.

(4) The board shall also maintain a list of each state, territory or possession of the United States, or foreign country in which the requirements and qualifications for registration are comparable to those established in this state and with which a reciprocity agreement or other form of mutual recognition exists.

(5) The records kept by the board shall be prima facie evidence of the proceedings of the board and a transcript, certified by the president and vice president, shall be admissible in evidence with the same force and effect as if the original was produced.

SOURCES: Laws, 1997, ch. 522, § 12, eff from and after July 1, 1997.

Cross References — Application for registration to include information necessary for the roster maintained pursuant to this section, see § 73-63-29.

Recognition of out-of-state licenses, see § 73-63-39.

§ 73-63-25. Designation of Attorney General as counsel for board.

Except as otherwise authorized in Section 7-5-39, the Attorney General shall be counsel and attorney for the board and shall provide any legal services as may be requested by the board from time to time. The board may retain outside counsel and investigators to provide any legal and investigative assistance as may be necessary in enforcing this chapter as authorized in Chapter 546, Laws of 2012.

SOURCES: Laws, 1997, ch. 522, § 13; Laws, 2012, ch. 546, § 40, eff from and after July 1, 2012.

Editor's Note — For a complete list of Code sections affected by Chapter 546, Laws of 2012, see Table B, Allocation of Acts, in the supplement to the Statutory Tables Volume.

§ 73-63-27. Qualification of registered professional geologists; requirements of geologists-in-training.

(1)(a) Except as provided in subsections (2) and (3) of this section, the following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a registered professional geologist:

(i) Graduation from a course of study in geology satisfactory to the board from an accredited college or university, or from a program accredited by an organization recognized by the board, of four (4) or more years and which includes at least thirty (30) semester or forty-five (45) quarter hours of credit, with a major in geology or a geological specialty;

(ii) Demonstration through a specific record of a minimum of four (4) years of qualifying experience, after completion of the academic requirements, in geology or a specialty indicating that the applicant is competent to practice geology or a specialty. The board may require the experience be gained under the supervision of a geologist registered in this state or any other state with at least as stringent geologic registration requirements, or under the supervision of others who, in the opinion of the board, are qualified to have responsible charge of geological work;

(iii) Successful passage of at least one (1) examination in geology as determined and prescribed by the board; and

(iv) Other requirements as may be established in rules and regulations by the board.

(b) In addition to the qualifications named in paragraph (a) of this subsection, applicants for registration as a registered professional geologist shall include with their application at least three (3) letters of reference from geologists having personal knowledge of the applicant's geologic experience.

(c) The board may give credit for a master's degree in the geological sciences or in a specialty as one (1) year of professional experience and an earned doctorate degree in the geological sciences or in a specialty as two (2) years of professional experience. The board shall not give more than two (2) years of professional experience credit for the completion of all graduate degrees.

(d) The board may give credit for geological research or teaching of persons studying geology or a specialty at an accredited college or university level as qualifying experience, if the research or teaching, in the opinion of the board, is comparable to experience obtained in the practice of geology or a specialty.

(e) The board may adopt qualifications which, in its judgment, are equivalent to the educational and experience requirements in subsection (1)(a) of this section.

(f) No person shall be eligible for registration as a professional geologist who is not of good character and reputation.

(2) Before December 31, 1998, any applicant who applies for registration or enrollment shall be considered qualified, without written examination, if the applicant possesses the qualifications prescribed in subsection (1) or (3) of this section, as the case may be.

(3) An applicant who applies for registration before July 1, 1998, shall be qualified without written examination, if the applicant possesses the following qualifications:

(a) A bachelor's degree from an accredited college or university in civil engineering with a minimum of fifteen (15) semester hours or an equivalent number of quarter hours of credit in geology or a geologically-related course, as determined by the board;

(b) A certificate of registration as a professional engineer in the State of Mississippi; and

(c) A minimum of ten (10) years of qualifying experience in geotechnical or geological engineering work demonstrated by a specific record.

If the board determines after review of the academic and experience qualifications required by this subsection that the applicant is competent to practice geology, the board may issue a certificate of registration under this chapter.

(4) Applicants for enrollment as a geologist-in-training shall meet the qualifications for a registered professional geologist, except the requirement for four (4) years of experience.

(5) The board may adopt requirements for the issuance of temporary registrations. Qualifications for temporary registrations shall be consistent with those required under this chapter.

(6) Upon written request of an applicant, the board may waive, on a case-by-case basis, any requirement for registration or enrollment, except payment of the applicable fees. The request shall state the reasons a waiver should be granted. The requirements waived and the basis for that waiver shall be recorded in the applicant's record and in the proceedings of the board, and any waiver may be subject to repeal or suspension as determined by the board.

SOURCES: Laws, 1997, ch. 522, § 14, eff from and after July 1, 1997.

Cross References — Registration fees, see § 73-63-37.

§ 73-63-29. Form of application.

(1) Applications for enrollment as a geologist-in-training or for registration as a professional geologist, in general or in any specialty, shall be on forms prescribed and furnished by the board. The application shall include information necessary for the roster under Section 73-63-23, the applicant's educational qualifications and a detailed summary of the applicant's qualifying experience. The board may require the applicant to have provided an original transcript or equivalent documentation of the applicant's educational qualifications. The applicant shall also submit a signed statement that the applicant has read and shall adhere to any code of professional conduct established by the board. The application shall be signed and sworn by the applicant before a notary public.

(2) An application for enrollment as a geologist-in-training or for registration or renewal of registration as a professional geologist, in general or in any specialty, shall be accompanied by the appropriate application fee.

SOURCES: Laws, 1997, ch. 522, § 15, eff from and after July 1, 1997.

Cross References — Application fee, see § 73-63-37.

Fraud, deceit or misrepresentation in obtaining certificate of registration as grounds for disciplinary actions, see § 73-63-43.

§ 73-63-31. Examination.

The board may adopt, in part or in whole, examinations prepared, administered or graded by other organizations, on a regional or national basis, which the board determines are appropriate to measure the qualifications of an applicant for registration as a professional geologist, in general or in a specialty of geology, or enrollment as a geologist-in-training. In adopting any examination, the board shall require that the examination questions and correct answers and any individual applicant's completed examination, be available to the board. The board shall retain the authority to determine a passing grade for purposes of registration or enrollment in this state.

SOURCES: Laws, 1997, ch. 522, § 16, eff from and after July 1, 1997.

Cross References — Qualification for registration without examination, see § 73-63-27.

Examination fee, see § 73-63-37.

§ 73-63-33. Issuance of certificates; denial of certificates.

(1) The board shall issue a certificate of registration or certificate of enrollment as a geologist-in-training, upon payment of the applicable registration fee, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this chapter.

In the case of a registered professional geologist, the certificate of registration shall authorize the "practice of geology."

In the case of a geologist-in-training, the certificate shall state that the applicant has successfully passed the examination required by the board and has been enrolled as a "geologist-in-training" for a period of ten (10) years or until registration as a professional geologist, whichever comes first.

Certificates shall show the full name, have a serial number, and be signed by the president and the vice president of the board under seal of the board.

(2) If the board denies the issuance of a certificate of registration or a certificate of enrollment, the board shall notify the applicant in writing within thirty (30) days following the board's decision and shall state the reasons for the denial. Within thirty (30) days following receipt of the notice, the applicant may make written request for a hearing, which, if granted, shall be conducted as provided in this chapter. If no hearing is requested or is untimely requested, the board's action shall be final.

(3) The issuance of a certificate of registration by the board shall be prima facie evidence that the person named on the certificate is entitled to all the rights and privileges of a registered professional geologist and to practice geology as a firm or corporation, while the certificate remains unrevoked or unexpired.

(4) Each registered professional geologist shall be provided with a seal of a design established by the board, bearing the person's name, registration number, the legend "Registered Professional Geologist." This cost of providing the seal shall be borne by the registered professional geologist. Geologic reports, documents or other public records offered to or filed for the public and prepared or issued by a registered professional geologist, or by a subordinate under the supervision of a registered professional geologist, shall be stamped with the seal, signed and dated by the registered professional geologist.

SOURCES: Laws, 1997, ch. 522, § 17, eff from and after July 1, 1997.

Cross References — Practice of geology defined, see § 73-63-5.
Expiration and renewal of certificates, see § 73-63-35.
Registration fees, see § 73-63-37.
Preference in awarding public contracts for professional geological services given to resident registered professional geologists, see § 73-63-55.

§ 73-63-35. Expiration of certificates; renewal; lost or destroyed certificates.

(1) Except as provided in Section 33-1-39, certificates of registration shall be valid for a period of two (2) years, and shall expire on a date or dates established by the board. The board shall notify every registered professional geologist of the date of expiration of that person's certificate and the amount of the fee that shall be required for its renewal at least sixty (60) days before the expiration date. Upon expiration, a certificate shall be cancelled and is invalid, and may not be renewed unless provided in this chapter.

(2) The board shall renew the certificate of registration or certificate of enrollment of any registrant who, within sixty (60) days following the expiration date:

(a) Submits a renewal application, the renewal fee and any penalty for late renewal; and

(b) Meets the requirements for renewal established by the board which may include requiring evidence of continued competence in the practice of geology through a review of qualifications and experience.

(3) The board shall establish requirements and conditions for the reissuance of certificates of registration and certificates of enrollment which have lapsed, expired, or have been suspended or revoked.

(4) The board shall issue a new certificate to replace any certificate of registration or certificate of enrollment which has been lost, destroyed, or mutilated. The holder of the certificate shall bear the cost of issuing a new certificate.

SOURCES: Laws, 1997, ch. 522, § 18; Laws, 2007, ch. 309, § 40, eff from and after passage (approved Mar. 8, 2007.)

Cross References — Fees for renewal or reissuance of license, see § 73-63-37.

§ 73-63-37. Fees.

(1) The board shall establish, by rule, application fees which shall not exceed Two Hundred Dollars ($200.00) for application for registration and One Hundred Dollars ($100.00) for application for enrollment.

(2) In addition to the application fee required under subsection (1) of this section, an applicant shall pay an examination fee before taking the applicable examination. The board shall set a reasonable examination fee for each examination administered by the board to defer the actual cost of the examination.

(3) The board shall establish, by rule, registration fees which shall not exceed Two Hundred Dollars ($200.00) annually for registration as a registered professional geologist and One Hundred Dollars ($100.00) annually for enrollment as a geologist-in-training.

(4) The board shall establish, by rule, fees for the renewal and reissuance of a certificate of registration or certificate of enrollment.

SOURCES: Laws, 1997, ch. 522, § 19; Laws, 2006, ch. 598, § 5, eff from and after July 1, 2006.

Cross References — Application for registration, see § 73-63-29.
Examination, see § 73-63-31.
Renewal or reissuance of certificates of registration, see § 73-63-35.

§ 73-63-39. Recognition of out-of-state registration, licensure, or certification; reciprocal registration agreements.

(1) The board may sign agreements with boards of registration, licensure or certification in other states, and with other appropriate organizations and agencies, for the purposes of:

(a) Developing uniform standards for registration of professional geologists or enrollment of geologists-in-training;

(b) Accrediting educational programs;

(c) Establishing reciprocity, comity, temporary registration, or mutual recognition of registration or enrollment;

(d) Developing regional or national examinations;

(e) Evaluating applicants; or

(f) Other purposes consistent with this chapter.

(2) Any person holding a valid certificate of registration, licensure or certification for the practice of geology or a recognized specialty of geology, issued under the laws of any state or territory or possession of the United States, or any foreign country, shall be eligible for registration, without examination. The board may issue a certificate of registration to any person who has made application, provided proof of registration, licensure or certification under requirements which the board determines to be substantially similar to those established under this chapter and paid all applicable fees. The issuance of a certificate of registration by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 1997, ch. 522, § 20; Laws, 2013, ch. 350, § 41, eff from and after July 1, 2013.

Cross References — Board to maintain list of states, territories or foreign countries in which requirements and qualifications for registration are comparable to those established in this state and with which a reciprocity agreement exists, see § 73-63-23.

Fees, see § 73-63-37.

Comparable Laws from other States — Florida: Fla. Stat. § 492.108.

Georgia: O.C.G.A. § 43-19-14.

North Carolina: N.C. Gen. Stat. § 89E-11.

South Carolina: S.C. Code Ann. § 40-77-280.

Tennessee: Tenn. Code Ann. § 62-36-110.

Virginia: Va. Code Ann. § 54.1-2208.3.

§ 73-63-41. Use of the designation "Certified Professional Geologist."

The board shall recognize and authorize the use of the designation "Certified Professional Geologist" or "C.P.G." as used by the American Institute of Professional Geologists, the designation "Certified Petroleum Geologist" or "C.P.G." as used by the American Association of Petroleum Geologists, and the use of the designation "Certified Geologist" or any similar designation established by a professional geological organization, society or association recognized by the board, subject to the following conditions:

(a) The full name or recognized abbreviation of the organization granting the certification is stated following or in conjunction with the use of the designation or abbreviation; and

(b) The designation or abbreviation is not used in a manner that may mislead the public or create any impression that a person is registered to practice geology unless that person is registered under this chapter.

SOURCES: Laws, 1997, ch. 522, § 21, eff from and after July 1, 1997.

Cross References — Using designations "certified Professional Geologist" or "R.P.G." unless registered as violation of this chapter, see § 73-63-51.

§ 73-63-43. Grounds for disciplinary actions; disciplinary proceedings; sanctions.

(1) The board, upon satisfactory proof and in accordance with this chapter and rules and regulations of the board, may take the disciplinary actions provided under this chapter against any person for the following reasons:

(a) Violation of this chapter, any rule or regulation or written order of the board, any condition of registration or standards of professional conduct;

(b) Fraud, deceit or misrepresentation in obtaining a certificate of registration as a registered professional geologist or certificate of enrollment as a geologist-in-training;

(c) Gross negligence, malpractice, incompetency, misconduct, or repeated incidents of simple negligence in or related to the practice of geology;

(d) Practicing or offering to practice geology, or holding oneself out as being registered or qualified to practice geology, by an individual who is not registered under this chapter, or by any other person not employing a registered professional geologist as required by this chapter;

(e) Using the seal of another, or using or allowing use of one's seal on geologic work not performed by or under the supervision of the registered professional geologist, or otherwise aiding or abetting any person in the violation of this chapter;

(f) Disciplinary action by any state agency, board of registration or similar licensing agency for geologists or any profession or occupation related to the practice of geology. The sanction imposed by the board shall not exceed in severity or duration the sanction upon which that action is based;

(g) Addiction to or chronic dependence on alcohol or other habit-forming drugs or being an habitual user of alcohol, narcotics, barbiturates, amphetamines, hallucinogens or other drugs having similar effect resulting in the impairment of professional or ethical judgment; or

(h) Injuring or damaging, or attempting to injure or damage, the professional reputation of another by any means whatsoever; this provision shall not relieve a registered professional geologist from the obligation to expose unethical or illegal conduct to the proper authorities nor shall it preclude confidential appraisals of geologists or other persons or firms under consideration for employment.

(2) Any person may bring a complaint alleging a violation of this chapter, any rule or regulation or written order of the board, any condition of

registration or standards of professional conduct. Complaints shall be made in writing, sworn to by the person filing the complaint, and filed with the board. The board shall investigate all complaints and upon finding a basis for that complaint, shall notify the accused in writing specifying the provisions of this chapter, rule, regulation or order of the board or the condition or standard alleged to be violated and the facts alleged to constitute the violation. The notice shall require the accused to appear before the board at a time and place to answer the charges. The time of appearance shall be at least thirty (30) days from the date of service of the notice. Notice shall be made by service on the person or by registered or certified mail, return receipt requested, to the last known business or residence address of the accused, as shown on the records of the board. Within fifteen (15) days following receipt of that notice, the accused shall file a written response, admitting, denying or taking exception to the charges. In the absence of a response or if the charges are admitted or if no exception is taken, the board may take disciplinary action without holding a hearing. A disciplinary action may be settled by the board and the accused, either before or after a hearing has begun.

A person who reports or provides information to the board in good faith is not subject to an action for civil damages.

(3) Any hearing under this section may be conducted by the board itself at a regular or special meeting of the board or by a hearing officer designated by the board. The hearing officer may conduct the hearings in the name of the board at any time and place as conditions and circumstances may warrant. The hearing officer or any member of the board may administer oaths or affirmations to witnesses appearing before the hearing officer or the board.

If any witness fails or refuses to attend upon subpoena issued by the board, refuses to testify or refuses to produce books, papers, reports, documents and similar material, the production of which is called for by a subpoena, the attendance of any witness and the giving of that person's testimony and the production of books, papers, reports, documents and similar material shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of the attendance and testimony of witnesses in civil cases in the courts of this state.

All hearings before the board shall be recorded either by a court reporter or by tape or mechanical recorders and subject to transcription upon order of the board or any interested person. If the request for transcription originates with an interested person, that person shall pay the cost of transcription.

The accused shall have the right to be present at the hearing in person, by counsel or other representative, or both. The board may continue or recess the hearing as may be necessary.

(4) If a hearing officer conducts the hearing on behalf of the board, the hearing officer shall upon completion have the record of that hearing prepared. The record shall be submitted to the board along with that hearing officer's findings of fact and recommended decision. Upon receipt and review of the record of the hearing and the hearing officer's findings of fact and recommended decision, the board shall render its final decision as provided in subsection (5) of this section.

Any person ordered to appear for an alleged violation may request a hearing before a majority of the board. A verbatim record of any previous hearings on that matter shall be filed with the board, together with findings of fact and conclusions of law made by the board based on the record.

(5) At the conclusion of the hearing, the board may either decide the issue at that time or take the case under advisement for further deliberation. The board shall render its decision not more than ninety (90) days after the close of the hearing, and shall forward to the last known business or residence address of the accused, by certified or registered mail, return receipt requested, a written statement of the decision of the board.

If a majority of the board finds the accused guilty of the charges filed, the board may take any combination of the following actions:

(a) Deny the renewal of a certificate of registration or certificate of enrollment;

(b) Suspend the certificate of registration or certificate of enrollment of any registrant for a specified period of time, not to exceed three (3) years, or revoke the certificate of registration or certificate of enrollment of any registrant;

(c) Censure, reprimand or issue a public or private admonishment to an applicant, a registrant or any other person engaged in the practice of geology under this chapter;

(d) Impose limitations, conditions or restrictions upon the practice of an applicant, a registrant or upon any other person engaged in the practice of geology;

(e) Require the guilty party to complete a course, approved by the board, in ethics;

(f) Impose probation upon a registrant, requiring regular reporting to the board;

(g) Require restitution, in whole or in part, of the compensation or fees earned by a registrant or by any other person engaging in the practice of geology; or

(h) Assess and levy upon the guilty party a monetary penalty not to exceed Five Thousand Dollars ($5,000.00) for each violation.

(6) Any monetary penalty assessed and levied under this section shall be paid to the board upon the expiration of the period allowed for appeal of that penalty, or may be paid sooner if the guilty party elects. Money collected by the board under this section shall be deposited to the credit of the Registered Professional Geologists Fund.

When payment of a monetary penalty assessed and levied by the board in accordance with this section is not paid when due, the board may begin and maintain proceedings in its name for enforcement of payment in the chancery court of the county and judicial district of residence of the guilty party and if the guilty party is a nonresident of the State of Mississippi, the proceedings shall be in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(7) The board may assess and impose the costs of any disciplinary proceedings conducted under this section against either the accused, the charging party, or both, as it may elect.

(8) The authority of the board to assess and levy the monetary penalties under this section shall not be affected or diminished by any other proceeding, civil or criminal, concerning the same violation or violations, unless provided in this section.

(9) If the board determines there is an imminent danger to the public welfare, the board may issue an order for the immediate suspension of a certificate of registration or a certificate of enrollment. The registrant may request a hearing on the matter within fifteen (15) days after receipt of the order of suspension. The board shall file charges as provided in this section within thirty (30) days after the issuance of an order, or the suspension shall be of no further force and effect. If charges are filed, the order of suspension shall remain in effect until disposition of all charges.

(10) The board, for sufficient cause, may reissue a revoked certificate of registration or certificate of enrollment, upon written application to the board by the applicant. The application shall be made not less than three (3) years after the revocation. The board may impose reasonable conditions or limitations in connection with any reissuance.

(11) In addition to the reasons named in subsection (1) of this section, the board may suspend the certificate of registration or certificate of enrollment of any person for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a certificate for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a certificate suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a certificate suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a certificate when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under Section 73-63-49. Any appeal of a suspension of a certificate that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in Section 73-63-49. If there is any conflict between Section 93-11-157 or 93-11-163 and this chapter, Section 93-11-157 or 93-11-163, as the case may be, shall control.

SOURCES: Laws, 1997, ch. 522, § 22; Laws, 2006, ch. 598, § 6, eff from and after July 1, 2006.

Cross References — Report of disciplinary actions, see § 73-63-45.

Proceedings of enforcement of chapter, see § 73-63-47.

Appeal, see § 73-63-49.

Violation of chapter, see § 73-63-51.

Suspension of state-issued licenses, permits or registrations for noncompliance with child support order, see §§ 93-11-151 through 93-11-163.

§ 73-63-45. Report of disciplinary actions.

The board shall report disciplinary actions to appropriate state and federal agencies, any other registration, licensing or certification board or organization in this state or any other state, or any other person deemed necessary by the board.

SOURCES: Laws, 1997, ch. 522, § 23, eff from and after July 1, 1997.

Cross References — Grounds for disciplinary actions and penalties, see § 73-63-43.
Proceedings of enforcement of Chapter, see § 73-63-47.
Appeal, see § 73-63-49.
Violations of chapter, see § 73-63-51.

§ 73-63-47. Proceedings of enforcement of chapter by board.

In lieu of, or in addition to, the penalty provided in Section 73-63-43, the board may begin and maintain in the name of the state any proceedings necessary or appropriate to enforce this chapter, any rule or regulation or written order of the board or any condition of registration. The proceedings may be filed and heard in the appropriate circuit, chancery, county or justice court of the county in which venue may lie. The board may obtain mandatory or prohibitory injunctive relief, either temporary or permanent, and in cases of imminent and substantial hazard or endangerment, it shall not be necessary that the state plead or prove: (i) that irreparable damage would result if the injunction did not issue; (ii) that there is no adequate remedy at law; or (iii) that a written complaint or board order has first been issued for the alleged violation.

SOURCES: Laws, 1997, ch. 522, § 24, eff from and after July 1, 1997.

Cross References — Grounds for disciplinary actions and penalties, see § 73-63-43.
Report of disciplinary actions, see § 73-63-45.
Appeal, see § 73-63-49.
Violations of Chapter, see § 73-63-51.

§ 73-63-49. Appeal to chancery court by aggrieved persons.

Except as provided in Section 73-63-43(10), any person aggrieved by an action of the board revoking that person's certificate of registration or certificate of enrollment as a geologist-in-training or denying the renewal of registration as a professional geologist, or who is aggrieved by the action of the board as a result of disciplinary proceedings conducted under Section 73-63-43 may appeal to the chancery court of the county in which the appellant resides or the Chancery Court of the First Judicial District of Hinds County, at the election of the appellant. If the appellant is a nonresident of this state, the appeal shall be made to the Chancery Court of the First Judicial District of Hinds County. The appeal shall be perfected before the board by the filing with the board of a notice of appeal to the chancery court. The notice of appeal shall be filed not later than thirty (30) days after the decision of the board is forwarded to the guilty party.

All appeals perfected under this section shall act as a supersedeas, and shall be made to the chancery court solely upon the record made before the board during the disciplinary hearing. The appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor. When the appeal is properly perfected, the board shall cause the record of the proceedings conducted before it to be compiled, certified and filed with the chancery court. The chancery court shall always be deemed open for hearing of appeals and the chancellor may hear the appeal in termtime or in vacation at any place in the chancellor's district. The appeal shall have precedence over all civil cases, except election contests. The chancery court shall review all questions of law and of fact. If no prejudicial error is found, the matter shall be affirmed and remanded to the board for enforcement. If a prejudicial error is found, the matter shall be reversed and the chancery court shall remand the matter to the board for appropriate action as may be shown or necessary under the circumstances. Appeals may be taken from the chancery court to the Supreme Court in the manner as required by law.

SOURCES: Laws, 1997, ch. 522, § 25, eff from and after July 1, 1997.

Cross References — Grounds for disciplinary actions and penalties, see § 73-63-43.
Report of disciplinary actions, see § 73-63-45.
Proceeding of enforcement of chapter, see § 73-63-47.
Violations of chapter, see § 73-63-51.

§ 73-63-51. Violations of this chapter.

(1) Any person committing the following acts shall be guilty of a violation under this chapter:

(a) Practicing, offering or attempting to practice geology, unless registered as a registered professional geologist or otherwise expressly exempted by this chapter;

(b) Using the terms "Registered Professional Geologist," "R.P.G.," or claiming any specialty in geology, as a professional, business or commercial identification, title, name, representation, claim or otherwise holding out to the public, as being registered to practice geology or any of its specialties unless registered under this chapter;

(c) Altering or revising any document, map or work signed or sealed by a registered professional geologist unless that alteration or revision is signed and sealed by a registered professional geologist, changing or altering the name or seal of another registered professional geologist on any document, map or work, or otherwise impersonating another, or presenting or attempting to use the certificate of registration or the seal of another;

(d) Fraud, deceit or misrepresentation in obtaining a certificate of registration as a registered professional geologist or certificate of enrollment as a geologist-in-training, including, but not limited to, knowingly giving any false or forged evidence of any kind to the board or to any board member in obtaining a certificate of registration or certificate of enrollment;

(e) Using the seal or signing any document under a certificate of registration which has expired or has been suspended or revoked;

(f) Managing, or conducting as manager, proprietor, or agent, any place of business from which geological work, not expressly exempted by this chapter, is offered, performed or practiced for others, unless that work is supervised or performed by a registered professional geologist;

(g) Using geologic work for purposes in violation of this chapter; or

(h) Violating this chapter, or any rule, regulation or written order of the board, or any condition or limitation of registration.

(2) Any person convicted of a violation of this section shall be guilty of a misdemeanor, and shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment not to exceed six (6) months, or both, for each violation. Each day of a continuing violation is a separate violation. In imposing any fine under this section, the court shall, to the extent practicable, recover any economic benefit received as a result of noncompliance.

SOURCES: Laws, 1997, ch. 522, § 26, eff from and after July 1, 1997.

Cross References — Grounds for disciplinary actions and penalties, see § 73-63-43.
Report of disciplinary actions, see § 73-63-45.
Proceedings of enforcement of chapter, see § 73-63-47.
Appeal, see § 73-63-49.

§ 73-63-53. Memorandum of understanding.

Within one (1) year following its appointment, the board shall seek to enter into a memorandum of understanding with the Mississippi State Board of Registration for Professional Engineers and Land Surveyors and any other necessary agencies, containing guidelines for resolving jurisdictional concerns that may arise between registered professional geologists and licensed professional engineers and other registered, licensed or certified professional personnel.

SOURCES: Laws, 1997, ch. 522, § 27, eff from and after July 1, 1997.

§ 73-63-55. Preference given to resident professional geologists.

(1) In awarding public contracts for professional geological services, preference shall be given to resident registered professional geologists over those nonresident professional geologists domiciled in a state having laws which grant a preference to the professional geologists who are residents of that state. Nonresident registered professional geologists shall be awarded Mississippi public contracts only on the same basis as the nonresident professional's state awards contracts to Mississippi registered professional geologists under similar circumstances. When a nonresident professional

geologist submits a proposal for a public project, that person shall attach a copy of the resident state's current statute, resolution, policy, procedure or executive order pertaining to that state's treatment of nonresident professional geologists. Resident registered professional geologists actually domiciled in Mississippi, be they corporate, individuals or partnerships, shall be granted preference over nonresidents in the awarding of contracts in the same manner and to the same extent as provided by the laws of the state of domicile of the nonresident. As used in this section, the term "resident registered professional geologist" includes a nonresident person that has been qualified to do business in this state and has maintained a permanent full-time office in the State of Mississippi for not less than two (2) years prior to submitting a proposal for a public project, and the subsidiaries and affiliates of that person.

(2) This section shall not apply to any contract for any project upon which federal funds would be withheld because of the preference requirements of this subsection.

(3) Any contract, agreement or arrangement for professional geological services negotiated, made or entered into, directly or indirectly, by the state, counties, municipalities or any political subdivision thereof, or by any special districts, which is in any way in violation of this section, is declared to be void as contrary to the public policy of this state and shall not be given effect or enforced by any court of this state or by any of its officers or employees.

(4) Nothing in this section shall affect the validity of any contract in existence before July 1, 1997.

(5) For purposes of this section, "professional geological services" means the practice of geology or those services performed by any registered professional geologist in connection with professional employment or practice.

SOURCES: Laws, 1997, ch. 522, § 28, eff from and after July 1, 1997.

Comparable Laws from other States — Alabama Code Annotated, § 39-3-5. Virginia Code Annotated, § 2.2-4324.

§ 73-63-57. Repealed.

Repealed by Laws of 2006, ch. 598, § 7 effective July 1, 2006. [Laws, 1997, ch. 522, § 29, eff from and after July 1, 1997.]

Editor's Note — Former § 73-63-57 was entitled: "Repeal of Sections 73-63-1 through 73-63-55."

CHAPTER 65

Professional Art Therapists

Sec.
73-65-1. Definitions.
73-65-3. Professional Art Therapists Advisory Council established.
73-65-5. State Board of Health powers and duties [Repealed effective July 1, 2020].
73-65-7. Certificate issuance and qualifications; continuing education.
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73-65-13. Grounds for denial, suspension or revocation of certificate; disciplinary proceedings.
73-65-15. Applicability and construction; use of title.
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73-65-19. Repealed

§ 73-65-1. Definitions.

As used in this chapter, unless the context otherwise requires:

(a) "Board" means the Mississippi State Board of Health;

(b) "Licensed professional art therapist" means a person who has completed a master's or doctoral degree program in art therapy, or an equivalent course of study, from an accredited educational institution and who is licensed by the Mississippi State Board of Health, or who received registration from the American Art Therapy Association before 1980;

(c) "License holder" means a licensed professional art therapist licensed under the provisions of this chapter;

(d) "Accredited institution" means a university or college accredited by a nationally recognized accrediting agency of institutions of higher education, or an institution and clinical program approved by the American Art Therapy Association, Inc.

SOURCES: Laws, 1998, ch. 568, § 1; reenacted and amended, Laws, 2000, ch. 489, § 1; reenacted without change, Laws, 2002, ch. 420, § 1; reenacted without change, Laws, 2004, ch. 350, § 1; Laws, 2012, ch. 406, § 1, eff from and after July 1, 2012.

§ 73-65-3. Professional Art Therapists Advisory Council established.

(1) There is created the Professional Art Therapists Advisory Council. The purpose of the council is to advise the Mississippi State Board of Health on matters relating to the administration and interpretation of the provisions of this chapter. The council shall consist of three (3) members who are professional art therapists licensed pursuant to Section 73-65-7 and who have engaged in art therapy practice for at least five (5) years, two (2) members shall be family members of consumers or consumers of art therapy services and one (1) physician or health professional member. All council members shall be

citizens of the United States and residents of Mississippi. The initial council members who are not family members of consumers shall meet requirements for licensure and be licensed within one (1) year after July 1, 2000. Beginning July 1, 2000, each council member who is not a family member of a consumer shall be licensed as an art therapist before appointment and shall be actively engaged in the practicing or teaching of art therapy. Members of the council shall be appointed by the board for terms of four (4) years.

(2) Members of the council shall receive no compensation or per diem for their service on the council, but may receive reimbursement for travel expenses incurred in attending council meetings, as provided in Section 25-3-41.

(3) The council shall elect annually from its membership a chairman and any other officers as necessary to carry out its duties. The council shall meet at least two (2) times each year. Additional meetings may be called by the chairman, upon the written request of at least two (2) members of the council. Three (3) council members shall constitute a quorum of the council.

SOURCES: Laws, 1998, ch. 568, § 2; reenacted and amended, Laws, 2000, ch. 489, § 2; reenacted without change, Laws, 2002, ch. 420, § 2; reenacted without change, Laws, 2004, ch. 350, § 2; Laws, 2008, ch. 409, § 1; Laws, 2012, ch. 406, § 2, eff from and after July 1, 2012.

§ 73-65-5. State Board of Health powers and duties [Repealed effective July 1, 2020].

The board shall:

(a) Promulgate regulations necessary to carry out the provisions of this chapter;

(b) Require that all applicants register for, take and pass the Art Therapy Credentials Board Examination as administered by the Art Therapy Credentials Board, Inc.;

(c) Establish the application deadline for and score required to pass the examination;

(d) Process applications and review the required examinations;

(e) Issue licenses to applicants who meet the requirements of Section 73-65-7 or 73-65-9;

(f) Deny, suspend or revoke a license to practice art therapy;

(g) Censure, reprimand, or place a license holder or applicant on probation for a period not to exceed one (1) year;

(h) Maintain a current register of license holders as a matter of public record;

(i) Establish criteria for continuing education;

(j) Establish procedures for receiving, investigating and resolving complaints against license holders;

(k) Approve the level of supervision and experience required for persons seeking licensure;

(*l*) Assess fees for the issuance and renewal of licenses to cover expenses of the board in administering this chapter; any increase in the fees charged by the board under this paragraph shall be in accordance with the provisions of Section 41-3-65;

(m) Implement an impaired professional art therapist treatment program; and

(n) Adopt a code of ethics as established by the Art Therapy Credentials Board, Inc.

SOURCES: Laws, 1998, ch. 568, § 3; reenacted and amended, Laws, 2000, ch. 489, § 3; reenacted without change, Laws, 2002, ch. 420, § 3; reenacted without change, Laws, 2004, ch. 350, § 3; Laws, 2012, ch. 406, § 3; Laws, 2016, ch. 510, § 59, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added "any increase in the fees ... Section 41-3-65" at the end of (*l*).

§ 73-65-7. Certificate issuance and qualifications; continuing education.

(1) The board shall issue a license as a licensed professional art therapist to any person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant is at least twenty-one (21) years of age, is a registered art therapist as defined by the Art Therapy Credentials Board, Inc., demonstrates professional competency by satisfactorily passing the required examination, and is a board certified art therapist as defined by the Art Therapy Credentials Board, Inc.

(2) The board may approve on a case-by-case basis applicants who have a master's degree or a doctoral degree from nonaccredited institutions.

(3) If an applicant has met all of the requirements for licensure except satisfactorily passing the required examination, the applicant shall be scheduled to take the next examination following the approval of the examination.

(4) The board may issue a license to an applicant without examination if the person possesses a valid regulatory document issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia, or any foreign nation that in the judgment of the board has requirements substantially equivalent to or exceeding the requirements in this section. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(5) The board may issue provisional licensure as a professional art therapist to any person who has completed the educational requirements established by the Art Therapy Credentials Board, Inc., and has met all requirements for licensure as a professional art therapist, except the experience and/or examination requirements, and is under the supervision of a supervisor acceptable to the board.

(6) The board may set criteria for continuing education and supervisory experience.

SOURCES: Laws, 1998, ch. 568, § 4; reenacted and amended, Laws, 2000, ch. 489, § 4; reenacted without change, Laws, 2002, ch. 420, § 4; reenacted without change, Laws, 2004, ch. 350, § 4; Laws, 2012, ch. 406, § 4; Laws, 2013, ch. 350, § 42, eff from and after July 1, 2013.

Cross References — Person licensed under this section who intends to retire required to notify board before expiration of current license, see § 73-65-9.

Certificate renewal, see § 73-65-9.

Application fees, see § 73-65-11.

Grounds for denial of application, see § 73-65-13.

§ 73-65-9. Certificate renewal, suspension and reinstatement; retirement. [Repealed effective July 1, 2020].

(1) Except as provided in Section 33-1-39, each license holder shall renew the license to practice art therapy biennially by submitting a renewal application on a form provided by the board, paying a license renewal fee, and producing evidence of completion of relevant professional continuing education experience satisfactory to the board, not to exceed forty (40) hours per renewal cycle.

(2) A ninety-day grace period shall be allowed for each license holder after the licensure period, during which time the license may be renewed upon payment of the renewal fee, the late fee, and compliance with all renewal requirements.

(3) Any license granted by the board shall be automatically suspended if the holder fails to apply for the license renewal pursuant to this section within a period of three (3) months after the renewal deadline; however, any suspended license may be restored by the board upon payment of a reinstatement fee not to exceed One Hundred Dollars ($100.00), in addition to any unpaid renewal or late fees. Any increase in the fee charged by the board under this subsection shall be in accordance with the provisions of Section 41-3-65. Failure to renew a license within three (3) months from the date of suspension as provided in this section shall cause the license to be automatically revoked. Reinstatement of a revoked license shall require the license holder to reapply and meet all current standards for licensure.

(4) A person licensed under the provisions of Section 73-65-7 who intends to retire as a licensed professional art therapist shall notify the board in writing before the expiration of his current licensure. If, within a period of five (5) years from the year of retirement, the license holder wishes to resume practice as a licensed professional art therapist, he shall notify the board in writing, and upon giving proof of completing the required continuing education and the payment of an amount equivalent to elapsed renewal fees, the license shall be restored in full effect.

SOURCES: Laws, 1998, ch. 568, § 5; reenacted and amended, Laws, 2000, ch. 489, § 5; reenacted without change, Laws, 2002, ch. 420, § 5; reenacted without change, Laws, 2004, ch. 350, § 5; Laws, 2007, ch. 309, § 41; Laws, 2016, ch. 510, § 60, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment added the second sentence of (3); and made a minor stylistic change.

Cross References — Renewal fees, see § 73-65-11.

Grounds for denial of application or revocation or suspension of license, see § 73-65-13.

§ 73-65-11. Fees [Repealed effective July 1, 2020].

The board shall set the amount of the fees required to be paid by applicants for licensure and license holders including, but not limited to, the following:

(a) For an application for initial licensure, the fee shall be nonrefundable and shall not exceed Two Hundred Dollars ($200.00);

(b) For renewal of a license, the fee shall not exceed Two Hundred Dollars ($200.00);

(c) For a duplicate or replacement license, the fee shall not exceed Twenty-five Dollars ($25.00);

(d) For failure to renew a license within the allotted grace period pursuant to Section 73-65-9, the fee shall not exceed One Hundred Dollars ($100.00); and

(e) Other reasonable fees for administrative services.

Any increase in the fees charged by the board under this section shall be in accordance with the provisions of Section 41-3-65.

SOURCES: Laws, 1998, ch. 568, § 6; reenacted and amended, Laws, 2000, ch. 489, § 6; reenacted without change, Laws, 2002, ch. 420, § 6; reenacted without change, Laws, 2004, ch. 350, § 6; Laws, 2016, ch. 510, § 61, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 510, § 65, effective July 1, 2016, provides: "SECTION 65. This act shall stand repealed on July 1, 2020."

Amendment Notes — The 2016 amendment substituted "For renewal of a license, the fee" for "The renewal fee" in (b); and added the last paragraph.

Cross References — Application for license, see § 73-65-7.

Application for license, see § 73-65-7.

Certificate renewal, see § 73-65-9.

§ 73-65-13. Grounds for denial, suspension or revocation of certificate; disciplinary proceedings.

(1) The board may deny any application, or suspend or revoke any license held or applied for under the provisions of Section 73-65-7 if the person:

(a) Is found guilty of fraud, deceit, or misrepresentation in procuring or attempting to procure a license to practice art therapy;

(b) Is adjudicated mentally incompetent;

(c) Is found guilty of a felony or misdemeanor involving moral turpitude;

(d) Is found guilty of unprofessional or unethical conduct in this or any other jurisdiction;

(e) Has been using any controlled substance or alcoholic beverage to an extent or in a manner dangerous to the person, any other person, or the public, or to an extent that the use impairs the ability to perform as a licensed professional art therapist;

(f) Has violated any provision of this chapter; or

(g) Willfully or negligently divulges a professional confidence.

(2) A certified copy of the record of conviction shall be conclusive evidence of the conviction.

(3) Disciplinary proceedings may be initiated upon the receipt by the board of a sworn complaint by any person, including members of the board.

SOURCES: Laws, 1998, ch. 568, § 7; reenacted and amended, Laws, 2000, ch. 489, § 7; reenacted without change, Laws, 2002, ch. 420, § 7; reenacted without change, Laws, 2004, ch. 350, § 7, eff from and after June 30, 2004.

Cross References — Penalties for violations, see § 73-65-17.

§ 73-65-15. Applicability and construction; use of title.

(1) The provisions of this chapter shall not apply to persons licensed, certified, or registered under any other provisions of Mississippi law, including, but not limited to, physicians, social workers, psychologists, and nurses, or students within accredited training programs of these professions. The provisions of this chapter shall not apply to "activities professionals" at licensed nursing facilities. Nothing in this chapter shall be construed to limit, interfere with, or restrict the practice, descriptions of services, or manner in which these persons hold themselves out to the public.

(2) No person shall use the title "licensed professional art therapist" or hold himself out as having this status, unless he is licensed as such by the board.

SOURCES: Laws, 1998, ch. 568, § 8; reenacted and amended, Laws, 2000, ch. 489, § 8; reenacted without change, Laws, 2002, ch. 420, § 8; reenacted without change, Laws, 2004, ch. 350, § 8, eff from and after June 30, 2004.

§ 73-65-17. Penalties for violations.

Any person who violates the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than Five Hundred Dollars ($500.00), or sentenced to three (3) months in the county jail, or both, for each violation.

SOURCES: Laws, 1998, ch. 568, § 9; reenacted without change, Laws, 2000, ch. 489, § 9; reenacted without change, Laws, 2002, ch. 420, § 9; reenacted without change, Laws, 2004, ch. 350, § 9, eff from and after June 30, 2004.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 73-65-19. Repealed.

Repealed by Laws of 2004, ch. 350, § 10 eff from and after June 30, 2004.

[Laws, 1998, ch. 568, § 10; Laws, 2000, ch. 489, § 10; Laws, 2002, ch. 420, § 10, eff from and after July 1, 2002.]

Editor's Note — Former 73-65-19 contained an automatic repealer for §§ 73-65-1 through 73-65-17.

CHAPTER 67

Professional Massage Therapists

Sec.
73-67-1. Short title [Repealed effective July 1, 2018].
73-67-3. Legislative findings [Repealed effective July 1, 2018].
73-67-5. Exemptions [Repealed effective July 1, 2018].
73-67-7. Definitions [Repealed effective July 1, 2018].
73-67-9. State Board of Massage Therapy; membership; quorum [Repealed effective July 1, 2018].
73-67-11. Bond of executive secretary of board; State Board of Massage Therapy Fund [Repealed effective July 1, 2018].
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73-67-15. Duties of board; board members immune from liability [Repealed effective July 1, 2018].
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73-67-19. Enforcement actions; investigations; hearing [Repealed effective July 1, 2018].
73-67-21. Practice of massage therapy prohibited unless licensed; requirements for licensure; exemptions; validity of certificates of registration issued before July 1, 2008; fingerprint-based criminal history records check required [Repealed effective July 1, 2018].
73-67-23. Examination [Repealed effective July 1, 2018].
73-67-25. Reciprocity; temporary reciprocal permit [Repealed effective July 1, 2018].
73-67-27. Grounds for denial, suspension or revocation of license; investigative proceedings; prostitution in connection with massage; penalties [Repealed effective July 1, 2018].
73-67-29. Advertising restrictions; exemptions [Repealed effective July 1, 2018].
73-67-31. Duties and responsibilities of licensed massage therapists; diagnosis and prescriptions prohibited [Repealed effective July 1, 2018].
73-67-33. Massage establishments to have adequate lavatory facilities, workable telephone, and copy of massage therapy code of ethics and professional conduct [Repealed effective July 1, 2018].
73-67-35. Education requirements for licensure; standards for massage therapy programs and schools; evidence of current national accreditation in lieu of application [Repealed effective July 1, 2018].
73-67-37. Grace period for licensure [Repealed effective July 1, 2018].
73-67-39. Repeal of Sections 73-67-1 through 73-67-37.

§ 73-67-1. Short title [Repealed effective July 1, 2018].

This chapter shall be known and may be cited as the "Mississippi Professional Massage Therapy Act."

SOURCES: Laws, 2001, ch. 549, § 1; reenacted without change, Laws, 2004, ch. 476, § 1; reenacted without change, Laws, 2008, ch. 451, § 1; reenacted without change, Laws, 2013, ch. 477, § 1, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section, see § 73-67-39.

§ 73-67-3. Legislative findings [Repealed effective July 1, 2018].

The Legislature finds that in the profession and practice of massage therapy there is a necessity to preserve and protect individual life and health, promote the public interest and welfare by providing for the licensure of massage therapists and assuring public safety.

SOURCES: Laws, 2001, ch. 549, § 2; reenacted without change, Laws, 2004, ch. 476, § 2; reenacted and amended, Laws, 2008, ch. 451, § 2; reenacted without change, Laws, 2013, ch. 477, § 2, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section see § 73-67-39.

§ 73-67-5. Exemptions [Repealed effective July 1, 2018].

(1) The provisions of this chapter shall not apply to the following:

(a) Persons state licensed, state registered, state certified, or otherwise state credentialed by the laws of this state to include massage as part of their practice, or other allied modalities that are certified by a nationally accredited organization recognized by the board;

(b) Students enrolled in a massage therapy school and, at the same time, working in a student clinic, and out-of-state massage therapy instructors when teaching in these programs;

(2) Any exemption granted under this section is effective only insofar as and to the extent that the bona fide practice of the profession or business of the person exempted overlaps into the field comprehended by this law, and exemptions under this section are only for those activities that are currently authorized and performed in the course of the bona fide practice of the business or profession of the person exempted.

SOURCES: Laws, 2001, ch. 549, § 3; reenacted and amended, Laws, 2004, ch. 476, § 3; reenacted without change, Laws, 2008, ch. 451, § 3; reenacted without change, Laws, 2013, ch. 477, § 3, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section see § 73-67-39.

Cross References — Practice of physical therapy to include therapeutic massage, see § 73-23-33.

Athletic trainer functioning in both clinical and nonclinical settings may use modalities including massage for treatment of musculoskeletal injuries, see § 73-55-9.

§ 73-67-7. Definitions [Repealed effective July 1, 2018].

For purposes of this chapter, the following terms shall have the meanings stated in this section, unless otherwise stated:

(a) "Approved massage therapy school" means a facility that is licensed by this board and meets the curriculum and instruction requirements as stated in this chapter.

(b) "Board" means the State Board of Massage Therapy as created in this chapter.

(c) "Board-accepted hours" means hours of education accepted by the board to meet requirements of exemption and/or continuing education for pre-act practitioners and is different from "board-approved programs" and/or "board-approved school hours."

(d) "Classroom hour" means no less than fifty (50) minutes of any one (1) clock hour during which the student participates in a learning activity under the supervision of a board licensed instructor.

(e) "Examination" means the State Board of Massage Therapy approved examination for licensure.

(f) "License" means a State Board of Massage Therapy approved form of credential indicating that the license holder has met the requirements of this chapter for the practice of massage therapy.

(g) "Massage" means touch, stroking, kneading, stretching, friction, percussion and vibration, and includes holding, positioning, causing movement of the soft tissues and applying manual touch and pressure to the body (excluding an osseous tissue manipulation or adjustment). "Therapy" means action aimed at achieving or increasing health and wellness. "Massage therapy" means the profession in which the practitioner applies massage techniques with the intent of positively affecting the health and well-being of the client, and may adjunctively (i) apply allied modalities, heat, cold, water and topical preparations not classified as prescription drugs, (ii) use hand held tools such as electric hand massagers used adjunctively to the application of hand massage or devices designed as t-bars or knobbies, and (iii) instruct self-care and stress management. "Manual" means by use of hand or body.

(h) "Massage establishment" means a place of business where massage is being conducted.

(i) "Massage therapist" means a person who practices massage therapy.

(j) "MPMTA" means the "Mississippi Professional Massage Therapy Act."

(k) "Mississippi State Law Examination" means the comprehensive examination on the Mississippi Professional Massage Therapy Act and the associated relevant Board Rules and Regulations that is given by the board or its representative.

(*l*) "Pre-act practitioner" means an individual who has practiced professional massage therapy before January 1, 2001.

(m) "Professional" means requiring minimum standards of conduct, ethics and education.

(n) "Provisional permit" means a temporary permit approved by the board when all requirements, other than board-approved national or state examinations, have been met, not to exceed ninety (90) days.

SOURCES: Laws, 2001, ch. 549, § 4; reenacted and amended, Laws, 2004, ch. 476, § 4; reenacted and amended, Laws, 2008, ch. 451, § 4; Laws, 2013, ch. 477, § 4, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section see § 73-67-39.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error was corrected in a paragraph designation by substituting (m) for (*l*m).

§ 73-67-9. State Board of Massage Therapy; membership; quorum [Repealed effective July 1, 2018].

(1) There is created the State Board of Massage Therapy.

(2) The board shall consist of five (5) members appointed by the Governor, with the advice and consent of the Senate. At least three (3) members shall be appointed from a list submitted by state representatives of one or more nationally recognized professional massage therapy association(s), all of whom must be residents of Mississippi and must have engaged in the practice of massage therapy within the state for at least three (3) years, one (1) member shall be a licensed health professional in a health field other than massage therapy and one (1) member shall be a consumer at large who is not associated with or financially interested in the practice or business of massage therapy. No member of the board may be an owner or partner of a massage therapy school. The initial members of the board shall be appointed for staggered terms, as follows: one (1) member shall be appointed for a term that ends on June 30, 2002; one (1) member shall be appointed for a term that ends on June 30, 2003; one (1) member shall be appointed for a term that ends on June 30, 2004; and two (2) members shall be appointed for terms that end on June 30, 2005. Appointments shall be made within ninety (90) days from July 1, 2001.

(3) All subsequent appointments to the board shall be appointed by the Governor for terms of four (4) years from the expiration date of the previous term. No person shall be appointed for more than two (2) consecutive terms. By approval of the majority of the board, the service of a member may be extended at the completion of a four-year term until a new member is appointed or the current member is reappointed. The board shall elect one (1) of the appointed massage therapists as the chairman of the board.

(4) A majority of the board may appoint an executive director and other such individuals, including an attorney, as may be necessary to implement the provisions of this chapter. The board may hold additional meetings at such times and places as it deems necessary. A majority of the board shall constitute a quorum and a majority of the board shall be required to grant or revoke a license.

SOURCES: Laws, 2001, ch. 549, § 5; reenacted and amended, Laws, 2004, ch. 476, § 5; reenacted and amended, Laws, 2008, ch. 451, § 5; reenacted without change, Laws, 2013, ch. 477, § 5, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section see § 73-67-39.

ATTORNEY GENERAL OPINIONS

The Board of Massage Therapy may not use money collected from fees, fines and penalties to hire a lobbyist to lobby the Mississippi Legislature. Cox, Dec. 20, 2002, A.G. Op. #02-0679.

§ 73-67-11. Bond of executive secretary of board; State Board of Massage Therapy Fund [Repealed effective July 1, 2018].

Before entering upon discharge of the duties of the office, the executive director of the board shall furnish a bond, approved by the board, to the state in the sum of Five Thousand Dollars ($5,000.00). The bond shall be conditioned upon the faithful discharge of the duties of the office, the premium on the bond shall be paid from funds paid into the State Treasury by the director of the board, and the bond shall be deposited with the Secretary of State. All fees and other monies collected or received by the board shall be paid into and credited to a special fund that is created in the State Treasury, which shall be known as the "State Board of Massage Therapy Fund." Any interest earned on the special fund shall be credited to the special fund and shall not be paid into the State General Fund. Any unexpended monies remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund. Monies in the special fund shall be expended exclusively for the purposes of carrying out the provisions of this chapter. Disbursement of monies in the special fund shall be made only upon warrants issued by the State Fiscal Officer upon requisitions signed by the treasurer of the board. The financial records of the board shall be audited annually by the State Auditor. The board shall receive no appropriations from any state funds for its support except from the special fund.

SOURCES: Laws, 2001, ch. 549, § 6; reenacted and amended, Laws, 2004, ch. 476, § 6; reenacted without change, Laws, 2008, ch. 451, § 6; reenacted without change, Laws, 2013, ch. 477, § 6, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section see § 73-67-39.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 73-67-13. Compensation and payment of expenses [Repealed effective July 1, 2018].

Each member of the board shall receive the per diem authorized under Section 25-3-69 for each day actually discharging his official duties, and shall receive reimbursement for mileage and necessary expense incurred, as provided in Section 25-3-41. The expenses of the board in carrying out the provisions of this chapter shall be paid upon requisitions signed by the chairman and/or secretary of the board and warrants signed by the State Fiscal Officer from the State Board of Massage Therapy Fund. Such expenses shall not exceed the amount paid into the State Treasury under the provisions of this chapter.

SOURCES: Laws, 2001, ch. 549, § 7; reenacted without change, Laws, 2004, ch. 476, § 7; reenacted without change, Laws, 2008, ch. 451, § 7; reenacted without change, Laws, 2013, ch. 477, § 7, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section see § 73-67-39.
Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 73-67-15. Duties of board; board members immune from liability [Repealed effective July 1, 2018].

(1) The board shall:

(a) Adopt an official seal and keep a record of its proceedings, persons licensed as massage therapists, and a record of the licenses that have been revoked or suspended;

(b) Keep on file all appropriate records pertaining to each license;

(c) Annually, on or before February 15, make a report to the Governor and Legislature of all of its official acts during the preceding year, its total receipts and disbursements, and a full and complete report of relevant statistical and significantly notable conditions of massage therapists in this state as uniformly stipulated by the board;

(d) Evaluate the qualifications of applicants for licensure under this chapter, and advise applicants as to the acceptance or denial of licensure with any reasons for denial within forty-five (45) days;

(e) Issue licenses to applicants who meet the requirements of this chapter;

(f) Inspect, or have inspected, when required, the business premises of any licensed massage therapist during their operating hours, so long as that inspection does not infringe on the reasonable privacy of any therapist's clients;

(g) Establish minimum training and educational standards for obtaining a license under this chapter, provided that requirements do not decrease;

(h) Establish a procedure for approval of educational standards required by this chapter;

(i) Investigate persons suspected of engaging in practices that may violate provisions of this chapter;

(j) Revoke, suspend or deny a license in accordance with the provisions of this chapter;

(k) Adopt an annual budget;

(*l*) Establish policies with respect to continuing education;

(m) Adopt rules:

(i) Specifying standards and procedures for issuance of a provisional permit;

(ii) Specifying licensure procedures for practitioners desiring to be licensed in this state who hold an active license or credentials from another state board;

(iii) The board shall prescribe renewal procedures, requirements, dates and fees for massage therapy licenses issued by the board and shall include provisions for inactive and lapsed licenses; those rules shall be in accordance with Section 33-1-39;

(n) Make available all forms necessary for carrying out all provisions of this chapter and any and all necessary business of the board;

(o) Establish written duties of the executive director;

(p) Establish a set of reasonable and customary fines and penalties for violations of this chapter, and fees, including refund policies, which shall be standardized and not exceeded unless amended with at least thirty (30) days' notice to those who are licensed;

(q) Establish, amend or repeal any rules or regulations necessary to carry out the purposes of this chapter and the duties and responsibilities of the board. Affected practitioners shall be sent relevant changes no less than once per licensure renewal;

(r) The board shall maintain a current register listing the name of every massage therapist licensed to practice in this state, his/her last known place of business and last known place of residence, and the date and number of his/her license;

(s) The board shall set up guidelines for the operation of schools of massage therapy, and it is charged with that regulation in this state. The board may prescribe reasonable rules and regulations governing schools of massage therapy for the guidance of persons licensed under this chapter in the operation of schools of massage therapy and in the practice of massage therapy. When the board has reasons to believe that any of the provisions of this chapter or the rules and regulations of the board have been violated, either upon receipt of a written complaint alleging those violations or upon the board's own initiative, the board or any of its authorized agents shall investigate same and may enter upon the premises of a school of massage therapy at any time during regular business hours of that school to conduct the investigation. The investigation may include, but not be limited to, conducting oral interviews with the complaining party, school or school owner(s) and/or students of the school, and reviewing records of the school pertinent to the complaint and related to an area subject to the authority of the board.

(2) Each board member shall be held accountable to the Governor for the proper performance of all duties and obligations of the member's office. Board members shall be immune from civil liability pertaining to any legal functions involving the carrying out of the activities and responsibilities of this chapter.

SOURCES: Laws, 2001, ch. 549, § 8; reenacted and amended, Laws, 2004, ch. 476, § 8; Laws, 2007, ch. 309, § 42; reenacted and amended, Laws, 2008, ch. 451, § 8; reenacted without change, Laws, 2013, ch. 477, § 8, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section, see § 73-67-39.
Cross References — Licensure requirements, see § 73-67-21.

§ 73-67-17. Rules and regulations [Repealed effective July 1, 2018].

The board may adopt rules:

(a) Establishing reasonable standards concerning the sanitary, hygienic and healthful conditions of the licensed massage therapist and of premises and facilities used by massage therapists;

(b) Relating to the methods and procedures used in the practice of massage;

(c) Governing the examination and investigation of applicants for the licenses issued under this chapter and the issuance, renewal, suspension and revocation of the license;

(d) Setting standards for certifying continuing education classes;

(e) Requiring that massage therapists supply the board with the accurate, current address or addresses where they practice massage;

(f) Establishing the educational, training and experience requirements for licensure by reciprocity;

(g) Establishing requirements for issuance and retention of an inactive license and/or provisional permits.

SOURCES: Laws, 2001, ch. 549, § 9; reenacted and amended, Laws, 2004, ch. 476, § 9; reenacted and amended, Laws, 2008, ch. 451, § 9; reenacted without change, Laws, 2013, ch. 477, § 9, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section, see § 73-67-39.

§ 73-67-19. Enforcement actions; investigations; hearing [Repealed effective July 1, 2018].

(1) The board shall report to the proper district attorney all cases that, in the judgment of the board, warrant prosecution.

(2) Massage therapists or establishments may not be discriminated against regarding business licenses and shall be treated as any other health care profession.

(3) Any civil penalty imposed under this section shall become due and payable when the person incurring the penalty receives a notice in writing of the penalty. The notice shall be sent by registered or certified mail. The person to whom the notice is addressed shall have thirty (30) days from the date of mailing of the notice in which to make written application for a hearing. Any person who makes that application shall be entitled to a hearing. The hearing shall be conducted as a contested case hearing. When an order assessing a civil penalty under this section becomes final by operation of law or on appeal, unless the amount of penalty is paid within ten (10) days after the order becomes final, it may be recorded with the circuit clerk in any county of this state. The clerk shall then record the name of the person incurring the penalty and the amount of the penalty in his lien record book.

(4) Where the board proposes to refuse to grant or renew a license or proposes to revoke or suspend a license, an opportunity for a hearing shall be

accorded. The board may designate any competent person(s) to preside at the hearing. The board shall promulgate rules for the conduct of hearings and issuance of orders.

(5) The board may adopt rules requiring any person, including, but not limited to, licensed massage therapists, corporations, organizations, health care facilities and state or local governmental agencies to report to the board any conviction, determination or finding that a holder of a license has committed an act that constitutes unprofessional conduct, or to report information that indicates that the holder of a license may not be able to practice his profession with reasonable skill and safety to consumers as a result of a mental, emotional or physical condition. If the entity fails to furnish a required report, the board may petition the circuit court of the county in which the entity resides or is found, and the court shall issue to the entity an order to furnish the required report. A failure to obey the order is a contempt of court.

(6) A person is immune from civil liability, whether direct or derivative, for providing information to the board.

(7) Upon the complaint of any citizen of this state, or upon its own motion, the board may investigate any alleged violation of this chapter. In the conduct of investigations, the board may take evidence; take the depositions of witnesses, including the person charged; compel the appearance of witnesses, including the person charged, before the board in person the same as in civil cases; require answers to interrogations; and compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation.

(8) The board shall make available, upon request, written appeals procedures for anyone whose license has been denied, suspended or revoked, and/or for anyone accused of violating any provisions of this chapter.

(9) Any time the board intends to deny an application for licensure, or suspend or revoke an existing license, the board shall give the person an opportunity for a hearing before taking final action.

SOURCES: Laws, 2001, ch. 549, § 10; reenacted and amended, Laws, 2004, ch. 476, § 10; reenacted and amended, Laws, 2008, ch. 451, § 10; reenacted without change, Laws, 2013, ch. 477, § 10, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section, see § 73-67-39.

JUDICIAL DECISIONS

1.-2. [Reserved for future use.]
3. Civil penalties.

1.-2. [Reserved for future use.]

3. Civil penalties.

Miss. Code Ann. § 73-67-19 confers upon the Mississippi State Board of Massage Therapy power to impose civil penalties. Dawson v. Miss. State Bd. of Massage Therapy, 949 So. 2d 829 (Miss. Ct. App. 2006).

§ 73-67-21. Practice of massage therapy prohibited unless licensed; requirements for licensure; exemptions; validity of certificates of registration issued before July 1, 2008; fingerprint-based criminal history records check required [Repealed effective July 1, 2018].

(1) It shall be the responsibility of a massage therapy establishment to verify the current license of any and all persons practicing massage therapy at the location of or on behalf of the establishment. Failure to comply is subject to penalty assessed by the board of not less than Five Hundred Dollars ($500.00) and not more than One Thousand Dollars ($1,000.00) per offense.

(2) No person may advertise massage or practice massage for compensation in this state unless he is licensed as a massage therapist by the board. No person may use the title of or represent himself to be a massage therapist or use any other title, abbreviations, letters, figures, signs or devices that indicate that the person is a massage therapist unless he is licensed to practice massage therapy under the provisions of this chapter. A current massage therapy license issued by the board shall at all times be prominently displayed in any place where massage therapy is being practiced.

(3) The following are requirements for licensure:

(a) An applicant must be eighteen (18) years of age, or older, on the date the application is submitted.

(b) An application must provide proof of high school graduate equivalency.

(c) An applicant must be of legal status not only to receive a license, but also to work in the State of Mississippi with that license.

(d) An applicant must supply proof of current certification in cardiopulmonary resuscitation (CPR) and first aid of at least eight (8) hours of training, including practical testing, and supply documentation of familiarity with the Americans With Disabilities Act.

(e) All required fees for licensure must be submitted by the applicant.

(f) Any and all requirements regarding good moral character and competency, as provided for in this chapter and in accepted codes of ethics, shall be met.

(g) An applicant must have completed an approved continuing education course on communicable diseases, including HIV/AIDS information and prevention.

(h) The applicant's official and certified transcript(s) from the applicant's massage therapy school. The transcript must verify that the applicant has completed a board-approved training program of no less than the minimum requirement for supervised in-class massage therapy instruction and student clinic, with a minimum grade requirement of "C" or better in every course of instruction, as stated for school requirements.

(4) The following pre-act practitioners are exempt from having to take any examination for licensure, but must fulfill all other requirements as stated in this chapter, except for the requirements in subsection (3) (h) of this section:

(a) Those having more than three hundred (300) documented, board-accepted in-class hours of massage therapy education before January 1, 2001.

(b) Those having more than five (5) years of professional massage therapy experience and a minimum of one hundred fifty (150) hours of approved massage therapy education.

(c) Those having no formal training, but who have successfully passed the National Certification Examination for Therapeutic Massage and Bodywork.

(d) All grandfathering exemption allowances as stated in this subsection (4) shall end on July 1, 2002, for nonstudents, and on June 1, 2003, for students who were enrolled in a part-time massage school curriculum on July 1, 2001. Individuals may apply for a license until the grandfathering exemption ends, but may not practice massage beyond the allowed grace period as provided for in Section 73-67-37 unless a valid massage therapy license or provisional permit is obtained. Except as provided in subsection (5) of this section, all other pre-act practitioners and anyone not practicing massage therapy before January 1, 2001, must take and pass the licensure examination and follow the requirements in this chapter to practice massage therapy for compensation in Mississippi.

(e) Students enrolled in a massage therapy curriculum of at least five hundred (500) hours on July 1, 2001, who complete graduation from the same curriculum.

(5) Any person who has practiced massage therapy for a period of more than twenty-five (25) years before March 14, 2005, who is employed as a massage therapist by a YMCA or YWCA authorized and existing as a nonprofit corporation under the laws of this state on March 14, 2005, is exempt from having to take any examination for licensure, but must fulfill all other requirements as stated in this chapter, except for the requirements in subsection (3) (b), (d), (g) and (h) of this section. Persons exempt under this subsection may apply for a massage therapy license until January 1, 2006, but may not practice massage therapy after January 1, 2006, unless a valid license is obtained.

(6) Certificates of registration issued by the board before July 1, 2008, shall remain valid as licenses until the next renewal period.

(7) An applicant must have successfully been cleared for licensure through an investigation that shall consist of a determination as to good moral character and verification that the prospective licensee is not guilty of or in violation of any statutory ground for denial of licensure as set forth in Section 73-67-27.

(a) To assist the board in conducting its licensure investigation, all applicants shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public

Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose.

(b) Any and all state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

(c) The board shall provide to the department the fingerprints of the applicant, any additional information that may be required by the department, and a form signed by the applicant consenting to the check of the criminal records and to the use of the fingerprints and other identifying information required by the state or national repositories.

(d) The board shall charge and collect from the applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant.

SOURCES: Laws, 2001, ch. 549, § 11; Laws, 2002, ch. 482, § 1; reenacted and amended, Laws, 2004, ch. 476, § 11; Laws, 2005, ch. 346, § 1; reenacted and amended, Laws, 2008, ch. 451, § 11; Laws, 2013, ch. 477, § 11, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the introductory paragraph of (f). The reference to "subsection (2)(h) of this section" was changed to "subsection (3)(h) of this section." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Editor's Note — For repeal date of this section, see § 73-67-39.

Cross References — Pre-act practitioner means an individual who has practiced professional massage therapy before January 1, 2001, see § 73-67-7.

Examination, see § 73-67-23.

Education requirements for licensure, see § 73-67-35.

Federal Aspects — Americans with Disabilities Act, see 42 USCS §§ 12101 et seq.

§ 73-67-23. Examination [Repealed effective July 1, 2018].

(1) The purpose of requiring examination is to determine that each applicant for licensure possesses the minimum skills and knowledge to practice competently.

(2) The board shall accept as evidence of competency, in addition to all other requirements as stated in this chapter, the successful completion of any state, nationally or internationally accredited examination approved by the board.

(3) Eligibility requirements to take an examination approved by the board are set by the organization that is responsible for establishing and maintaining the examination.

(4) An applicant for licensure who has been previously licensed may be required to take an examination approved by the board and achieve a passing score before re-licensure under any one (1) of the following circumstances:

(a) The applicant has been unlicensed voluntarily for more than thirty-six (36) calendar months; or

(b) The board may require reexamination in any disciplinary order, based upon the findings and conclusions relative to the competency of a holder of a license to practice massage before issuing an unconditional license.

(5) An applicant for licensure must also successfully complete the Mississippi State Law Examination.

SOURCES: Laws, 2001, ch. 549, § 12; reenacted and amended, Laws, 2004, ch. 476, § 12; Laws, 2007, ch. 368, § 1; reenacted and amended, Laws, 2008, ch. 451, § 12; Laws, 2013, ch. 477, § 12, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section, see § 73-67-39.

Cross References — Licensure without examination for holders of valid, current licenses in another state, see § 73-67-25.

§ 73-67-25. Reciprocity; temporary reciprocal permit [Repealed effective July 1, 2018].

(1) An applicant may be licensed by demonstrating proof that the applicant holds a valid, current license in another state with similar educational requirements to those required by this chapter, and that all other licensure requirements under this chapter are met. This is subject to investigation by the board and excludes grandfathering by other states.

(2) If an individual who is licensed in another state that has licensing standards substantially equivalent to the standards under this chapter applies for licensure, the board may issue a provisional permit authorizing the applicant to practice massage therapy pending completion of documentation that the applicant meets the requirements for licensure under this chapter. The provisional permit may reflect statutory limitations on the scope of practice. The provisional permit shall not be issued until an applicant has successfully passed the Mississippi State Law Examination.

(3) A current massage therapy license issued by the board shall at all times be prominently displayed in any place where massage therapy is being practiced.

(4) A license issued under this chapter is not transferable or assignable.

The issuance of a license or provisional permit by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 2001, ch. 549, § 13; reenacted and amended, Laws, 2004, ch. 476, § 13; reenacted and amended, Laws, 2008, ch. 451, § 13; Laws, 2013, ch. 350, § 43; Laws, 2013, ch. 477, § 13, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 43 of ch. 350, Laws of 2013, effective from and after July 1, 2013 (approved March 18, 2013), amended this section. Section 13 of ch. 477, Laws of 2013, effective July 1, 2013 (approved March 27, 2013), amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at its August 1, 2013, meeting.

Editor's Note — For repeal date of this section, see § 73-67-39.

Cross References — Examination requirement, see § 73-67-23.

Comparable Laws from other States — Alabama: Code of Ala. § 34-43-9.
Arkansas: A.C.A. § 17-86-308.
Florida: Fla. Stat. § 480.041.
Georgia: O.C.G.A. § 43-24A-13.
Louisiana: La. R.S. § 37:3556.
North Carolina: N.C. Gen. Stat. § 90-630.1.
South Carolina: S.C. Code Ann. § 40-30-150.
Tennessee: Tenn. Code Ann. § 63-18-112.
Virginia: Va. Code Ann. § 54.1-3029.

§ 73-67-27. Grounds for denial, suspension or revocation of license; investigative proceedings; prostitution in connection with massage; penalties [Repealed effective July 1, 2018].

(1) The board may refuse to issue or renew or may deny, suspend or revoke any license held or applied for under this chapter upon finding that the holder of a license or applicant:

(a) Is guilty of fraud, deceit or misrepresentation in procuring or attempting to procure any license provided for in this chapter;

(b) Attempted to use as his own the license of another;

(c) Allowed the use of his license by another;

(d) Has been adjudicated as mentally incompetent by regularly constituted authorities;

(e) Has been convicted of a crime, or has charges or disciplinary action pending that directly relates to the practice of massage therapy or to the ability to practice massage therapy. Any plea of nolo contendere shall be considered a conviction for the purposes of this section;

(f) Is guilty of unprofessional or unethical conduct as defined by the code of ethics;

(g) Is guilty of false, misleading or deceptive advertising, or is guilty of aiding or assisting in the advertising or practice of any unlicensed or unpermitted person in the practice of massage therapy;

(h) Is grossly negligent or incompetent in the practice of massage therapy;

(i) Has had rights, credentials or one or more license(s) to practice massage therapy revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the licensee similar to acts described in this section. A certified copy of the record of the jurisdiction making such a revocation, suspension or denial shall be conclusive evidence thereof; or

(j) Has been convicted of any felony, other than a violation of federal or state tax laws.

(2) Investigative proceedings may be implemented by a complaint by any person, including members of the board.

(3)(a) Any person(s) found guilty of prostitution using as any advertisement, claim or insignia of being an actual licensed massage therapist or to be practicing massage therapy by using the word "massage" or any other description indicating the same, whether or not the person(s) have one or more license for the person(s) or establishment(s), shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than One Thousand Dollars ($1,000.00), nor more than Five Thousand Dollars ($5,000.00), or imprisonment of up to six (6) months, or both, per offense, per person.

(b) Any person who knowingly participates in receiving illegal service(s) of any person found guilty as described in paragraph (a) of this subsection, upon conviction, shall be punished by a fine not exceeding Five Hundred Dollars ($500.00), or imprisonment for up to one (1) month, or both. Persons officially designated to investigate complaints are exempt.

(c) Any person who violates any provision of this chapter, other than violation(s) of paragraph (a) of this subsection, is guilty of a misdemeanor, and upon conviction, shall be punished by a fine not exceeding Five Hundred Dollars ($500.00), or imprisonment for up to one (1) month in jail, or both, per offense.

(d) The board, in its discretion, may assess and tax any part or all of the costs of any disciplinary proceedings conducted against either the accused, the charging party, or both, as it may elect.

SOURCES: Laws, 2001, ch. 549, § 14; reenacted and amended, Laws, 2004, ch. 476, § 14; reenacted and amended, Laws, 2008, ch. 451, § 14; reenacted without change, Laws, 2013, ch. 477, § 14, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section, see § 73-67-39.

Cross References — Board to keep record of certificates of registration that have been revoked or suspended, see § 73-67-15.

Advertising restrictions, see § 73-67-29.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violations, see § 99-19-73.

§ 73-67-29. Advertising restrictions; exemptions [Repealed effective July 1, 2018].

(1) Any licensed massage therapist advertising by the use of radio, newspaper, television, electronic media, flyers, business cards, phone book or any other means shall include legibly, or clearly audible, the massage therapy license number issued to the therapist(s) on and/or with that advertising. Massage establishments with six (6) or more licensed massage therapists shall be exempt from this provision provided that the therapy or service is performed by person(s) licensed under this chapter.

(2) Any and all advertising of the licensed massage therapist shall be of a professional and ethical nature and shall not be attached to or identified with any pornographic or other establishment that may be construed as unprofessional and/or unethical in the practice of professional massage therapy.

(3) No practice of, or advertisement by any means of, any type of therapy involving soft tissue movement by the use of any body part, instrument(s) or device(s), or any term that may be interpreted to involve massage, shiatsu, acupressure, oriental, Eastern or Asian massage techniques, spa, rub, or therapeutic touch, shall be allowed unless that therapy is performed by person(s) who are licensed or exempt as stated in this chapter.

(4) Providing information concerning continuing education of massage therapy shall not constitute advertising as that term is used in this section. National massage publications and out-of-state instruction/education/information materials are exempt.

(5) The advertising of any designation of massage, including the word "Swedish" (as used in this context), shall not be allowed in conjunction with any other term that the board finds questionable. Questionable terms may include "bath," "shampoo" and "escort."

(6) Massage schools that advertise for student clinic, or any other type of student massage, must conspicuously include the respective words "student massage" within the advertisement.

(7) Advertisers shall obtain the license number from each massage therapist before entering into an agreement or contract to advertise any form of massage therapy as stated in this chapter. The license number(s) shall be part of the actual advertisement. Massage establishments with six (6) or more licensed massage therapists shall be exempt from this provision provided that the therapy or service is performed by person(s) licensed under this chapter.

SOURCES: Laws, 2001, ch. 549, § 15; reenacted and amended, Laws, 2004, ch. 476, § 15; reenacted and amended, Laws, 2008, ch. 451, § 15; Laws, 2013, ch. 477, § 15, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section, see § 73-67-39.

Cross References — Penalty for person found guilty of prostitution who uses any advertisement, claim or insignia of being an actual registered massage therapist, see § 73-67-27.

§ 73-67-31. Duties and responsibilities of licensed massage therapists; diagnosis and prescriptions prohibited [Repealed effective July 1, 2018].

(1) All licensed massage therapists shall:

(a) Perform only those services for which they are qualified and which represent their training and education;

(b) Acknowledge their professional limitations and refer the client to an appropriate health professional when necessary, in cases where massage may be or is contraindicated;

(c) Recognize and respect the rights of all ethical practitioners and cooperate with health professionals in a professional manner;

(d) Obtain and keep an overview or profile of the client's state of being and health history and discuss any problem areas that may contraindicate massage;

(e) Keep accurate and up-to-date records regarding a client's condition before and after massage therapy session in cases of a client being treated for a specific condition. Public, sports and on-site seated massage sessions are exempt from documentation; sports massage sessions are exempt from post-event documentation;

(f) Provide sensitive attention and response to client's comfort levels for pressure and touch, and shall not cause bruising with any regularity;

(g) Maintain clear and honest communications with their clients, and acknowledge the confidential nature of the professional relationship with a client and respect rights to privacy;

(h) Abide by all laws that pertain to their work as a massage therapist;

(i) In no way instigate or tolerate any kind of sexual advance while acting in the capacity of a massage therapist;

(j) Provide and use draping to cover all genitalia;

(k) Clean/disinfect his hands immediately before each massage session and/or use medical gloves.

(2) No massage therapist shall diagnose or prescribe medicine, drugs or treatment.

SOURCES: Laws, 2001, ch. 549, § 16; reenacted without change, Laws, 2004, ch. 476, § 16; reenacted and amended, Laws, 2008, ch. 451, § 16; reenacted without change, Laws, 2013, ch. 477, § 16, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section, see § 73-67-39.

§ 73-67-33. Massage establishments to have adequate lavatory facilities, workable telephone, and copy of massage therapy code of ethics and professional conduct [Repealed effective July 1, 2018].

(1) Lavatories or wash basins provided with an adequate supply of both hot and cold running water should be available. Lavatories or wash basins

shall be provided with soap in a dispenser and paper, individual use towels, or air dryers.

(2) Any mobile massage shall have a previous recording of the client's name, address where the therapy is to occur, estimated time of return, and phone number (if available) in a conspicuous record.

(3) Every massage establishment shall be equipped with a workable telephone for emergency calls.

(4) A copy of the State of Mississippi Professional Massage Therapy Code of Ethics and Professional Conduct shall be prominently displayed.

SOURCES: Laws, 2001, ch. 549, § 17; reenacted and amended, Laws, 2004, ch. 476, § 17; reenacted without change, Laws, 2008, ch. 451, § 17; reenacted without change, Laws, 2013, ch. 477, § 17, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section, see § 73-67-39.

§ 73-67-35. Education requirements for licensure; standards for massage therapy programs and schools; evidence of current national accreditation in lieu of application [Repealed effective July 1, 2018].

(1) To obtain a massage therapy license, an applicant must submit to the board the applicant's official and certified transcript(s) from the applicant's massage therapy school. The transcript must verify that the applicant has completed a board-approved training program of not less than six hundred (600) hours of supervised in-class massage therapy instruction, and at least one hundred (100) hours of student clinic, with a minimum grade requirement of "C" or better in every course of instruction, in the following subjects:

(a) Two hundred (200) hours in massage theory and practicum;

(b) Two hundred (200) hours in science of the human body;

(c) Two hundred (200) hours in allied modalities; and

(d) One hundred (100) hours in supervised student clinic.

(2) "Massage theory and practicum" must include a minimum of the following classroom hours in the specified subject areas:

(a) Ten (10) hours in legalities including Mississippi massage law and ethics;

(b) Twenty (20) hours in history, benefits, indications and contraindications;

(c) One hundred (100) hours in massage demonstration and supervised practice, which must include, but is not limited to, client evaluation, stroking, kneading, stretching, friction, percussion, vibration, range of motion, hand held tools and devices designated as t-bars or knobbies, and draping and turning; and

(d) The remaining seventy (70) hours may expand on any or all of the previous three (3) subject areas and/or be related to practical massage.

(3) "Science of the human body" must include a minimum of the following classroom hours in the specified subject areas:

(a) Twenty (20) hours in anatomy, including all body systems;

(b) Twenty (20) hours in physiology, including all body systems;

(c) Twenty (20) hours in myology/kinesiology;

(d) Twenty (20) hours in neurology;

(e) Twenty (20) hours in pathology, including medical terminology; and

(f) The remaining one hundred (100) hours may expand on any or all of the previous six (6) subject areas and/or be related to the science of the human body.

(4) "Allied modalities" must include, but are not limited to, a minimum of the following classroom hours in the specified subject areas:

(a) Seven (7) hours in Eastern, European and Western theory/methods;

(b) Eight (8) hours in cardiopulmonary resuscitation (CPR) and first aid;

(c) Ten (10) hours in charting and documentation;

(d) Twenty-five (25) hours in hydrotherapy and infrared heat;

(e) Twenty (20) hours in referral methods within the health care system; and

(f) The remaining one hundred thirty (130) hours may expand on any or all of the previous five (5) subject areas, including the Americans With Disabilities Act, and/or be devoted to any approach to massage therapy and wellness, such as trigger points, management, communication, safety, oriental or Eastern massage techniques and specialized populations. Schools with a temporary or probationary board status license must include a comprehensive review class of no less than sixteen (16) hours and three (3) hours to sit for and pass the board comprehensive exam.

(5) "Student clinic" must include at least fifty (50) practical hands-on one-hour massage therapy sessions to be evaluated on documents filed and kept on record at the school for a minimum of six (6) months. These evaluations are to be completed by the clients of the massage therapy sessions and shall include the client's name, address, reason for session, indications and contraindications, date and signature. Each completed session shall constitute two (2) hours of student clinic. The hands-on session must be supervised by an instructor, board licensed in the area being supervised.

(6) A massage therapy program shall not operate in the State of Mississippi unless it meets the minimum standards of curriculum for licensure as stated in this chapter. Massage schools and massage curriculums for licensure preparation must obtain a national accreditation from such agencies as the Commission on Massage Therapy Accreditation or programs with the same or greater requirements. Existing massage schools will have five (5) years from July 1, 2001, to obtain that accreditation. New massage schools will have five (5) years from the opening of the massage school to show conformance with the accreditation requirements. An existing accredited massage school that loses its accreditation will have three (3) years from the date of loss of its accreditation to show conformance with the accreditation requirements.

(7) No massage therapy program shall consist of more than forty (40) in-class clock hours per week.

(8) Hours credited through transfer credit shall not be recognized by the board unless the following transfer standards are met:

(a) The school shall be provided with a certified transcript from a school licensed or approved in that state;

(b) Courses for which credit is granted shall parallel in content and intensity to the course offered by the school;

(c) Documentation of previous training shall be included in each student's permanent file.

(9) Private business and vocational schools that have obtained national accreditation from an accrediting agency designated by the United States Department of Education may submit evidence of current accreditation in lieu of other application requests. Applications submitted on evidence of national accreditation must be approved or denied within sixty (60) days after receipt. If no action is taken within sixty (60) days, the application shall be deemed approved and a massage therapy license must be issued.

SOURCES: Laws, 2001, ch. 549, § 18; reenacted without change, Laws, 2004, ch. 476, § 18; reenacted and amended, Laws, 2008, ch. 451, § 18; Laws, 2011, ch. 371, § 2; Laws, 2013, ch. 477, § 18, eff from and after July 1, 2013.

Editor's Note — For repeal date of this section, see § 73-67-39.
Federal Aspects — Americans with Disabilities Act, see 42 USCS §§ 12101 et seq.

§ 73-67-37. Grace period for licensure [Repealed effective July 1, 2018].

The grace period for licenses to be issued shall be from March 28, 2002, until July 1, 2002. Those meeting the minimum requirements as stated in this chapter, except for obtaining a license, may continue the practice of massage therapy or instruction thereof within the grace period. Massage curriculums that begin before July 1, 2001, may continue with the same curriculum until completion. Anyone not meeting the minimum requirements as stated in this chapter shall not advertise massage therapy or instruction thereof until they meet the minimum requirements of this chapter.

SOURCES: Laws, 2001, ch. 549, § 19; Laws, 2002, ch. 482, § 2; reenacted without change, Laws, 2004, ch. 476, § 19; reenacted and amended, Laws, 2008, ch. 451, § 19; reenacted without change, Laws, 2013, ch. 477, § 19, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation clarified an effective date in the first sentence. The reference to "the effective date of this act" was changed to "March 28, 2002." The Joint Committee ratified the correction at its August 5, 2008 meeting.
Editor's Note — For repeal date of this section, see § 73-67-39.

§ 73-67-39. Repeal of Sections 73-67-1 through 73-67-37.

Sections 73-67-1 through 73-67-37 shall stand repealed on July 1, 2018.

SOURCES: Laws, 2001, ch. 549, § 20; Laws, 2004, ch. 476, § 20; Laws, 2008, ch. 451, § 20; Laws, 2013, ch. 477, § 20, eff from and after July 1, 2013.

CHAPTER 69

Mississippi Electronic Protection Licensing Act

Sec.
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§ 73-69-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Electronic Protection Licensing Act."

SOURCES: Laws, 2006, ch. 528, § 1; Laws, 2014, ch. 525, § 1, eff from and after July 1, 2014.

§ 73-69-3. Purpose.

The purpose of this chapter is to assure the general public of the competence of individuals and companies which offer electronic protective systems, or services relating to such alarms or systems to the general public by establishing statewide uniform procedures and qualifications for the licensure of such individuals and companies.

SOURCES: Laws, 2006, ch. 528, § 2; Laws, 2014, ch. 525, § 2, eff from and after July 1, 2014.

§ 73-69-5. Definitions.

As used in this chapter, the following terms shall have the meanings specified in this section:

(a) "Alarm contracting" means providing an electronic protective system to another, including, but not limited to, the design, planning with the intent to pre-wire, pre-wiring, installation, maintenance, repair, testing, modification, improvement, alteration, inspection or servicing of an electronic protective system; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation directly.

(b) "Alarm contracting company" means an entity that holds a Class A license issued by the State Fire Marshal pursuant to this chapter.

(c) "Alarm verification" means an attempt by a monitoring company or its representative to contact a burglar alarm location or a burglar alarm user by telephone or other electronic means to determine whether a burglar alarm signal is valid in an attempt to avoid unnecessary police response before requesting law enforcement to be dispatched to the location. Alarm verification further means that at least a second call shall be made to a different number if the first attempt fails to reach an alarm user. All persons licensed to monitor alarms in Mississippi shall employ alarm verification standards as defined in the latest version of ANSI/CSAA CS-V-01, for all burglar alarm signals except for hold-up alarms.

(d) "Board" means the Electronic Protection Advisory Licensing Board.

(e) "Burglar alarm" or "burglar alarm system" or "intrusion detection system" or "electronic protective system" means an alarm, alarm system or portion of such an alarm or system that is intended to detect or warn of an intrusion or other emergency in a structure. Such systems shall be certified per the latest version of ANSI/SIA CP01.

(f) "Company" means a proprietorship, partnership, corporation, limited-liability company or any other entity.

(g) "Designated agent" means an owner or employee who holds a Class B license of an alarm contracting company who has been assigned the responsibility of submitting any notice required by this chapter to the State Fire Marshal.

(h) "Supervision" means direct on-site supervision by a qualified license holder for the duties being performed.

(i) "Electronic protective system" means a device or a series or assembly of interconnected devices which, when activated by automatic or manual means, produces an audible, visual or electronic signal intended to detect or warn of a threat to a structure or emergency to or from its occupants. This term shall include a burglar alarm system, intrusion detection system, closed-circuit video system or electronic access control system, all as defined in this chapter, or a portion or combination of such alarms or systems. However, the term "electronic protective system" shall not include the following: (i) an alarm system installed in a motor vehicle; (ii) a burglar alarm system, or household fire warning system sold at retail to an individual end user for self-installation; (iii) a single-station fire alarm system sold at retail to an individual end user for self-installation or installed by a fire department, the State Fire Marshal Office, a public agency, a volunteer fire association or their designated representatives.

(j) "Employee" means a person who performs services for wages or salary.

(k) "Employer" means a person or entity who hires another to perform services for a wage or salary.

(*l*) "Individual license" means a Class B, C, D or H license issued by the State Fire Marshal pursuant to this chapter.

(m) "Licensee" means a person or entity to which a license is granted pursuant to this chapter.

(n) "Officer" means the president, vice president, secretary, treasurer, comptroller or any other person who performs functions for an alarm contracting company, corresponding to those performed by those officers.

(o) "Operating location" means a physical address that houses or maintains records of clients.

(p) "Person" means a natural person or individual.

(q) "Principal" means a person or entity that owns at least twenty percent (20%) of an alarm contracting company regardless of the form of organization.

(r) "Salesperson" means a person who solicits another on behalf of an alarm contracting company by door-to-door personal interaction, or a person who participates in the design, planning, specification or layout of an electronic protective system on behalf of an alarm contracting company.

(s) "Closed-circuit video system" means an electronic protective system that provides video surveillance of events, primarily by means of transmission, recording, or transmission and recording of visual signals through the use of cameras, receivers, monitors and other visual imaging systems.

(t) "Electronic access control system" means an electronic protective system that is powered by the building's primary power source and is used as a process to grant or deny an individual access to a specific area or object based upon their possession of an item (which requires a decoder), a code or physical characteristic (biometrics).

(u) "Smoke alarm" means a single or multiple-station alarm responsive to smoke.

(v) "Single-station alarm" means a detector comprising an assembly that incorporates sensor, control components and an alarm notification appliance in one unit operated from a power source either located in the unit or obtained at the point of installation.

(w) "Multiple station alarm" means two (2) or more single-station alarm devices that can be interconnected so that actuation of one causes all integral or separate audible alarms to operate; or one (1) single-station alarm device having connections to other detectors or to a manual fire alarm box.

(x) "Heat detector" means a fire detector that detects either abnormally high temperature or rate-of-temperature rise, or both.

SOURCES: Laws, 2006, ch. 528, § 3; Laws, 2014, ch. 525, § 3, eff from and after July 1, 2014.

Cross References — State Fire Marshal, generally, see §§ 45-11-1 et seq.

§ 73-69-7. Administration and enforcement of chapter; powers and duties of State Fire Marshall; application procedure and qualifications for Class A license.

(1) The State Fire Marshal shall administer and enforce the provisions of this chapter and shall have the authority to promulgate and adopt such rules and regulations as may be necessary for such proper administration and enforcement. The Electronic Protection Advisory Licensing Board created in Section 73-69-21 shall advise the State Fire Marshal with respect to the rules and regulations of the provisions of this chapter. The State Fire Marshal shall have the authority to approve written training programs or acceptable equivalents for meeting the training requirements of this licensing law. The State Fire Marshal may also accept, as such an equivalent, licensure of a company or person by a jurisdiction outside this state, which has standards and requirements of practice which substantially conform to the provisions of this chapter. The State Fire Marshal shall also establish continuing education requirements.

(2) Application for a Class A license. In order to engage in alarm contracting, a company shall apply for and obtain a Class A license for each operating location doing business in the state. A Class A license shall authorize a company to engage in any type of alarm contracting. An applicant for a Class A license shall submit the following to the State Fire Marshal:

(a) Documentation that the company is an entity duly authorized to conduct business within this state.

(b) Documentation that the company holds a general liability and errors and omissions insurance policy, or a surety bond, in an amount not less than Three Hundred Thousand Dollars ($300,000.00).

(c) Documentation that the company carries a current and valid workers' compensation insurance policy as required by state law.

(d) The name of the person who will serve as the designated agent of the company.

(e) For a company applying for a Class A license, evidence that the company has at least one (1) employee who holds a Class B license at each of its operating locations.

(f) A statement that no officer or principal has been convicted of a felony, has received a first-time offender pardon for a felony, or has entered a plea of guilty or nolo contendere to a felony charge.

(g) The application fee authorized by this chapter.

(h) Documentation that the company is located within the physical boundaries of the state.

(i) Beginning on July 1, 2014, in order to assist the Office of the State Fire Marshal in determining an applicant's suitability for a license under this chapter, a Class A applicant, upon request from the State Fire Marshal, shall submit a set of fingerprints for all officers and principals with the submission of an application for license or at such time as deemed necessary by the State Fire Marshal. The Office of the State Fire Marshal shall forward the fingerprints to the Department of Public Safety for the purpose of conducting a criminal history record check. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. Fees related to the criminal history record check shall be paid by the applicant to the State Fire Marshal and the monies from such fees shall be deposited in the special fund in the State Treasury designated as the Electronic Protection Licensing Fund.

(j) The name of each company providing monitoring services.

(3) If the action by the State Fire Marshal is to nonrenew or to deny an application for license, the State Fire Marshal shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the State Fire Marshal within ten (10) days for a hearing before the State Fire Marshal to determine the reasonableness of the State Fire Marshal's action. The hearing shall be held within thirty (30) days.

SOURCES: Laws, 2006, ch. 528, § 4; Laws, 2014, ch. 525, § 4, eff from and after July 1, 2014.

Cross References — Application and qualification's for Class B, C, D and T licenses, see § 73-69-11.

Duration and renewal of licenses, see § 73-69-17.

Application fees, see § 73-69-19.

§ 73-69-9. Issuance of Class A license; display; employment of Class B license holder; duty of designated agent to provide certain notice to State Fire Marshal; inspection; retention period for client records.

(1) Any entity desiring to engage in alarm contracting shall hold a Class A Alarm Contracting Business license issued by the State Fire Marshal.

(2) If the State Fire Marshal finds that a company has met the requirements of licensing, he shall issue a Class A license to engage in alarm contracting to that company upon payment of the license fee authorized by this chapter. Such license shall include the name of the designated agent of the alarm contracting company as applicable.

(3) Each alarm contracting company shall be physically located within the boundaries of the state and shall clearly display its license in a conspicuous location at its place of business.

(4) Each alarm contracting company shall employ a Class B license holder.

(5) The designated agent of an alarm contracting company shall notify the State Fire Marshal within ten (10) days of the following:

(a) Any change in the business address of the company.

(i) Any change in ownership of or interest in the company.

(ii) Any owner, partner or other principal with an interest in the company, which has been convicted of a felony or entered a plea of guilty or nolo contendere to a felony charge or received a first-time offender pardon.

(b) Any change in the employment of a person holding an individual license.

(c) A change of the company providing monitoring services.

(6) In the event of the death of its designated agent or his separation from the company for any other reason, an alarm contracting company shall name another qualified owner or manager as its designated agent within ninety (90) days and shall notify the State Fire Marshal of such designation within ten (10) days.

(7) Each alarm contracting company doing business in the state shall be open for inspection by the State Fire Marshal or his designated representative at any reasonable time for the purpose of observation and collection of facts and data relating to proper enforcement of this chapter. No person acting on behalf of an alarm contracting company shall refuse to admit the State Fire Marshal or his designated representative to an operating location.

(8) Client records must be maintained for inspection by the State Fire Marshal for a three-year period.

SOURCES: Laws, 2006, ch. 528, § 5; Laws, 2014, ch. 525, § 5, eff from and after July 1, 2014.

Cross References — Work Class B license holder authorized to perform, see § 73-69-13.

License fees, see § 73-69-19.

§ 73-69-11. Application for Class B, C, D, and H licenses; educational requirements; automatic disqualification; agreements with other states for mutual recognition of individual license holders.

(1) Any person employed by an alarm contracting company shall hold an individual license issued by the State Fire Marshal. Such license shall authorize its holder to engage in alarm contracting, only to the extent of the terms as further provided in this chapter.

(2) Such application shall be accompanied by:

(a) Two (2) suitable photographs of the applicant acceptable to the State Fire Marshal. The State Fire Marshal shall keep one (1) photograph on file and shall make the other photograph a part of any license subsequently issued to the applicant.

(b) Documentation that the applicant meets educational requirements applicable to the type of license for which he is applying, as follows:

(i) For a Class B license: a minimum of Electronic Security Association, Level 2 A and Level 2 B Burglar Alarm training course or the Electronic Security Association, Fire Alarm Installation Methods and Advanced Intrusion Systems training courses, or equivalent training approved by the State Fire Marshal, and documentation proving residency within a radius of one hundred fifty (150) miles of the office to which he is assigned.

(ii) For a Class C license: a minimum of Electronic Security Association Level 1 Certified Alarm/Security Technician training course, or equivalent training approved by the State Fire Marshal.

(iii) For a Class D license: a minimum of Electronic Security Association, Understanding Electronic Security Systems training course, or equivalent training approved by the State Fire Marshal.

(iv) For a Class H license: application a Class B or Class C license holder that they will provide direct supervision of the Class H licensee.

(c)(i) A statement by the applicant that he has not been convicted of a felony, received a first-time offender pardon for a felony, or entered a plea of guilty or nolo contendere to a felony charge. A felony that has been dismissed pursuant to the Mississippi Criminal Code or equivalent judicial dismissal shall not apply to this paragraph.

(ii) A conviction or a plea of guilty or nolo contendere to a felony charge or receipt of a first-time offender pardon shall not constitute an automatic disqualification as otherwise required pursuant to subparagraph (i) if ten (10) or more years have elapsed between the date of application and the successful completion or service of any sentence, deferred adjudication or period of probation or parole.

(iii) Subparagraph (ii) shall not apply to any person convicted of a felony crime of violence or a sex offense as defined within the Mississippi Criminal Code.

(d) The State Fire Marshal shall have the authority to conduct criminal history verification on a local, state or national level. Beginning on July 1, 2014, in order to assist the Office of the State Fire Marshal in determining an applicant's suitability for a license under this chapter, an applicant shall submit a set of fingerprints with the submission of an application for license. The Office of the State Fire Marshal shall forward the fingerprints to the Department of Public Safety for the purpose of conducting a criminal history record check. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. Fees related to the criminal history record check shall be paid by the applicant to the State Fire Marshal and the monies from such fees shall be deposited in the special fund in the State Treasury designated as the Electronic Protection Licensing Fund.

(e) The application fee authorized by this chapter.

(3) The State Fire Marshal shall have the authority to determine if information submitted by an applicant is in a form acceptable to him. The State Fire Marshal shall verify or have another entity verify information submitted by each applicant.

(4) If the State Fire Marshal finds that an applicant has met the applicable requirements of the alarm licensing law, he shall issue the appropriate type of license to the applicant upon payment of the license fee authorized by this chapter.

(5) Each individual license holder shall maintain his license on his person while engaging in any type of alarm contracting as applicable. Each such license holder shall present his license for inspection upon demand by an employee of the Office of the State Fire Marshal or a law enforcement officer.

(6) Each individual license holder shall notify the State Fire Marshal, on a form specified and provided by the State Fire Marshal, within ten (10) days of the following:

(a) Any change in business or home address.

(b) Any separation from an employer or change in employer.

(c) Any conviction for a felony or entry of a plea of guilty or nolo contendere to a felony charge or receipt of a first-time offender pardon.

(7) No individual licensed under this chapter shall contract for his services as an independent contractor or agent without applying for and being issued a Class A license per Section 73-69-9. No alarm contracting company shall contract for the independent services of a holder of an individual license under this section.

(8) The State Fire Marshal may enter into reciprocal agreements with other states for mutual recognition of individual license holders, if the State Fire Marshal has established the criteria for acceptance of reciprocal agreements by rule or regulation. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(9) If the action by the State Fire Marshal is to nonrenew or to deny an application for license, the State Fire Marshal shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the State Fire Marshal within ten (10) days for a hearing before the State Fire Marshal to determine the reasonableness of the State Fire Marshal's action. The hearing shall be held within thirty (30) days.

SOURCES: Laws, 2006, ch. 528, § 6; Laws, 2013, ch. 350, § 44; Laws, 2014, ch. 525, § 6, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (2)(e). The reference to "this subsection" was changed to "this chapter." The Joint Committee ratified the correction at its August 5, 2008 meeting.

Editor's Note — Subsection (2)(b)(iv) appears to have language missing that relates to the holders of certain classes of licenses providing direct supervision of Class H licensees. The subsection is set out as amended by Section 6 of Chapter 525, Laws of 2014.

Cross References — Application and qualifications for Class A license, see § 73-69-7.

Duration and renewal of licenses, see § 73-69-17.

Application and license fees, see § 73-69-19.

§ 73-69-13. Class B, C, D, and H license holders authorized to perform certain work.

The State Fire Marshal is authorized to issue individual licenses to qualified applicants that entitles the license holder to perform the following:

(a) Class B license: Alarm System Technician. Such license shall authorize its holder to design, plan, specify, lay out, sell, pre-wire, install, maintain, repair, test, inspect or service an electronic protective system while in the employ of an alarm contracting company.

(b) Class C license: Alarm System Installer. Such license shall authorize its holder to design, plan, specify, lay out, sell, pre-wire, install, maintain, repair, test, inspect or service an electronic protective system while in the employ of an alarm contracting company.

(c) Class D license: Alarm System Salesperson. Such license shall authorize its holder to design, plan, specify, lay out or sell an electronic protective system while in the employ of an alarm contracting company.

(d) Class H license: Alarm System Helper. Such license shall authorize its holder to pre-wire, or assist a Class B or Class C license holder install or service an electronic protective system while under the direct supervision of a licensed Class B or Class C holder in the employ of an alarm contracting company.

SOURCES: Laws, 2006, ch. 528, § 7; Laws, 2014, ch. 525, § 7, eff from and after July 1, 2014.

§ 73-69-15. Exemptions from licensure requirement.

(1) No person or company shall engage in alarm contracting without holding a current and valid license issued by the State Fire Marshal as provided in this chapter. However, this requirement for licensure shall not apply to:

(a) Any company or natural person licensed to perform electrical work by the Mississippi State Board of Contractors. This exception from licensure shall apply to the installation of wire, conduit, or other wire raceways, its associated boxes or fittings. This exception from licensure shall also apply to the employees of a company or natural person excepted by this paragraph, but only as to work performed by them on behalf of the excepted employer. Notwithstanding any other provisions of this chapter, no person licensed under this chapter may install primary power sources of sixty (60) volts or greater when such power source is being installed to operate low-voltage systems.

(b) Any owner, management company or public institution and such person's or entity's employees while such person or entity is designing, installing, inspecting, repairing, servicing, recoding, adjusting or testing closed-circuit television alarm systems on the premises of the owner or public institution during the normal course and scope of his duties.

(c) Any owner, management company or public institution and such person's or entity's employees while such person or entity is designing, installing, inspecting, repairing, servicing or testing a burglar alarm system only on the premises of the owner or public institution during the normal course and scope of his duties.

(d) Any retailer that sells alarm systems as part of a multiproduct offering including any company and its affiliates, contractors, agents and employees that only sell alarm systems over the Internet or via a website, by telephone or in retail settings. This exception to licensure shall not apply to sales that take place door-to-door or physically inside or at or on a consumer's premises.

(e) Any retailer or installer of smoke alarm warning systems, or single-station heat detectors, sold and installed to detect or warn of smoke or fire and intended for use in a residential one- or two-family dwelling or wholly within the confines of an individual living unit in a residential multifamily structure.

(f) Any company, or its agents that monitor burglar alarm systems, intrusion detection systems, or electronic protection systems but that does not directly install such systems.

(g) Any professional engineer licensed by the Mississippi Board of Registration for Professional Engineers and Land Surveyors.

(h) Any owner, management company or public institution and such person's or entity's employees while such person or entity is designing, installing, inspecting, repairing, servicing, recoding, adjusting or testing telemedicine, store-and-forward telemedicine services, remote patient-monitoring services or mediation adherence-management services during the normal course and scope of his duties.

(2) No person or company shall aid, abet, facilitate or otherwise assist any unlicensed person or company in engaging in alarm contracting, including, but not limited to, the sale of an electronic protective system as defined in this chapter when such person or company knew or should have known that the person or company thus assisted was unlicensed.

(3) No person or company shall engage in alarm system contracting without holding a current and valid license issued by the State Fire Marshal as provided in this chapter. However, this requirement shall not apply to:

An officer or employee of the United States, this state, or any political subdivision of either, while engaged in the performance of his official duties within the course and scope of his employment with the United States, this state, or any political subdivision of either.

SOURCES: Laws, 2006, ch. 528, § 8; Laws, 2014, ch. 525, § 8, eff from and after July 1, 2014.

Editor's Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first paragraph of (3) by substituting "as provided in this chapter" for "as provided in this act." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

§ 73-69-17. Duration and renewal of licenses.

(1)(a) Each license issued pursuant to this chapter shall be valid for a period of one (1) year from its date of issuance and shall be renewed annually, on or before the anniversary date, by forwarding to the State Fire Marshal a renewal application accompanied by the payment of the renewal fee authorized by this chapter.

(b) Each licensee renewing a Class B, Class C or Class D license shall additionally submit required documentation of having satisfactorily completed continuing education requirements as established by the State Fire Marshal.

(2) Any license not renewed on or before its anniversary date shall expire and may be reinstated only upon payment of the reinstatement fee authorized by this chapter.

SOURCES: Laws, 2006, ch. 528, § 9, eff from and after July 1, 2006.

§ 73-69-19. Fees; Electronic Protection Licensing Fund created.

(1) The State Fire Marshal is authorized to assess and collect fees pursuant to this chapter, the amount of which shall not exceed the following:

(a) Application fee and provisional or original company Class A license	$ 450.00.
(b) Application fee and provisional or original individual Class B, Class C, Class D or Class H license	$ 150.00.
(c) License Class change fee	$ 50.00.
(d) Annual renewal for Class B, Class C, Class D or Class H license fee	$ 50.00.
(e) Annual renewal for a Class A license fee	$200.00.
(f) Fee for a duplicate or replacement license	$ 20.00.

(2) The fees established in this section shall not be refundable except under such conditions as the State Fire Marshal may establish.

(3) All monies received by the State Fire Marshal pursuant to this chapter, including, but not limited to, fees and fines, shall be deposited immediately upon receipt by the State Fire Marshal into a special fund which is hereby created in the State Treasury and designated as the Electronic Protection Licensing Fund.

(4) The monies in the Electronic Protection Licensing Fund shall be used solely for implementation, administration and enforcement of this chapter by

the State Fire Marshal. Any surplus monies and interest remaining to the credit of the fund at the end of the fiscal year shall remain to the credit of the fund, and no part thereof shall revert to the State General Fund.

SOURCES: Laws, 2006, ch. 528, § 10; Laws, 2014, ch. 525, § 9, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error the designations in subsection (1). As amended by Section 9 of Chapter 525, Laws of 2014, subsection (1) paragraphs were designated (a) through (c) and (e) through (g). To correct the error, the Joint Committee redesignated (1)(e) through (g) as (1)(d) through (f). The Joint Committee ratified the correction at its July 24, 2014, meeting.

§ 73-69-21. Electronic Protection Licensing Advisory Board created; composition; appointment of members; terms; vacancies; meetings; quorum; reimbursement for expenses; civil liability of members.

(1) The Electronic Protection Licensing Advisory Board is hereby created within the Department of Insurance. The board shall be composed of seven (7) members, as follows:

(a) Three (3) members shall be appointed by the Governor, one (1) member from each State Supreme Court District. Each member shall possess a valid Class A or Class B license and may be appointed from a list submitted by the Mississippi Alarm Association. Each of these appointments initially will have staggered terms. One (1) appointment will serve for two (2) years, one (1) appointment will serve for three (3) years, and the last appointment will serve for four (4) years. After the initial appointment terms, each appointee will serve for four (4) years.

(b) One (1) member shall be appointed by the State Fire Marshal from a list of nominees submitted to the State Fire Marshal by the Mississippi Alarm Association as a representative from the Alarm Manufacturing Industry. This appointment will serve for four (4) years.

(c) Two (2) members shall be appointed by the Governor at his discretion, one (1) of which shall be a law enforcement officer and one (1) shall be from the private sector. Each of these appointments will serve for four (4) years, concurrent with the term of the Governor.

(d) One (1) member shall be an employee of the Office of the State Fire Marshal designated by the State Fire Marshal. Such member shall serve as the chairman of the advisory board.

(2)(a) Each appointed member shall serve a term of four (4) years.

(b) The member designated by the State Fire Marshal shall serve a term concurrent with the term of the State Fire Marshal making such designation.

(c) No member shall serve more than two (2) consecutive terms except the member designated by the State Fire Marshal.

(d) A vacancy on the board occurring prior to expiration of a term shall be filled in the manner of the original appointment for the remainder of the term.

(3) The board shall meet at every quarter, or upon the call of the chairman or upon the written request of any three (3) members of the board. Notice of any such meeting shall be given to board members and the public at least fourteen (14) days in advance.

(4) Four (4) members of the board shall constitute a quorum for the transaction of business. The board may take action by majority vote of its members present and voting.

(5) Each appointed member of the board shall be reimbursed for travel and related expenses incurred, not to exceed those expenses authorized for reimbursement by the Department of Insurance, for each day that the member engages in board business.

(6) No member of the board shall be liable to civil action for any act performed in good faith in the execution of his duties as a board member.

SOURCES: Laws, 2006, ch. 528, § 11, eff from and after July 1, 2006.

§ 73-69-23. Offenses.

(1) Class I offenses shall be as follows:

(a) Failure of an alarm contracting company to timely notify the State Fire Marshal of certain changes in the status of the licensee as required by this licensing law.

(b) Failure of an alarm contracting company as applicable, to do either of the following:

(i) Clearly display the company's license at its place of business as required.

(ii) Replace a required Class B, license holder or its designated agent and to timely notify the State Fire Marshal as required by this licensing law.

(c) Failure of an individual license holder to maintain his license on his person and to present it for inspection as required by this licensing law.

(d) Assisting an unlicensed person or company to engage in alarm contracting or as prohibited.

(e) Refuse to admit the State Fire Marshal or his designated representative to an operating location or refuse to cooperate in the purposes of such admittance as required.

(2) Class II offenses shall be as follows:

(a) Commission of a second Class I offense.

(b) A Class I offense committed during a probation of one's licensure for a Class I offense.

(3) A Class III offense shall be as follows:

(a) The signature of or submission by an applicant or licensee of any document to the State Fire Marshal when the applicant or licensee knew that document contained false or intentionally misleading information.

(b) Engaging in alarm contracting without a license as prohibited.

(c) Engaging in alarm contracting during suspension of one's license.

(d) The repeated willful commission of Class I or Class II offenses.

(e) Failure by an alarm contracting company to maintain a general liability and errors and omissions insurance policy as required, or to maintain a workers' compensation insurance policy as required by state law.

(f) Engaging in false, misleading or deceptive acts or practices.

SOURCES: Laws, 2006, ch. 528, § 12; Laws, 2014, ch. 525, § 10, eff from and after July 1, 2014.

§ 73-69-25. Penalties.

(1) The State Fire Marshal may impose, by written citation after reasonable notice and opportunity for hearing in accordance with the Administrative Procedures Act, penalties for violation of this chapter as provided in this section. Appeals from imposition of such penalties shall also be governed by the Administrative Procedures Act.

(2) A Class I offense shall be punishable by any or all of the following:

(a) Written reprimand by the State Fire Marshal. Such reprimand shall be a part of the record of the licensee and shall be maintained by the State Fire Marshal for a period of three (3) years. During such time, the reprimand may be given consideration in taking any subsequent disciplinary action against that licensee.

(b) Probation of licensure for not more than twelve (12) months. Such probation may include placement of restrictions on the alarm contracting activities and the license of the offender. Any subsequent offense committed during probation will make the offender subject to penalties for a Class II offense.

(c) A fine of not more than Five Hundred Dollars ($500.00) per offense.

(3) A Class II offense shall be punishable by any or all of the following:

(a) Any penalty authorized for a Class I offense.

(b) Suspension of licensure for not more than twenty-four (24) months.

(c) A fine of not more than One Thousand Dollars ($1,000.00) per offense.

(4) A Class III offense shall be punishable by any or all of the following:

(a) Any penalty authorized for a Class I or Class II offense.

(b) Revocation of licensure.

(c) A fine of not more than Five Thousand Dollars ($5,000.00) per offense.

(5) The State Fire Marshal may impose a separate penalty for each separate commission of an offense.

(6) Any person who knowingly and willfully violates any of the provisions of this chapter or any rules and regulations made hereunder shall be liable to the State of Mississippi for a civil penalty of not more than Five Thousand Dollars ($5,000.00) for each such violation. Each violation of a provision of this chapter or a rule or regulation made hereunder shall constitute a separate

violation with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed Five Hundred Thousand Dollars ($500,000.00) for any related series of violations occurring within one (1) year from the date of the first violation.

(7) In addition to any other penalty provided in this section, an alarm contracting company, individual director, officer or agent of an alarm contracting company who knowingly and willfully fails to obtain the applicable license under this chapter and who is required to obtain such license under this chapter, and who may knowingly and willfully violate any provisions of this chapter or any rules and regulations made hereafter with respect to, including, but not limited to, the sale, lease, rent, design or planning with the intent to pre-wire, pre-wiring, installation, maintenance, repair, testing modification, improvement, alteration, inspection or servicing of an electronic protective system, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than One Thousand Dollars ($1,000.00) or imprisoned not more than one (1) year, or both.

SOURCES: Laws, 2006, ch. 528, § 13; Laws, 2014, ch. 525, § 11, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error at the end of (1). The letter "s" was added at the end of the word "Procedure" so that 'Administrative Procedure Act' now reads as "Administrative Procedures Act." The Joint Committee ratified the correction at its August 5, 2008 meeting.

Cross References — Administrative Procedures Act, see § 25-43-1.101 et seq.

Injunction for violation of this chapter, see § 73-69-29.

Additional penalties for violation of § 73-69-31, see § 73-69-31.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 73-69-27. Construction and effect of chapter.

(1) Except for requirements which pertain to all types of businesses generally, no county or municipality shall enact any new ordinance, rule or regulation regulating companies and persons subject to licensure pursuant to this chapter.

(2) This chapter shall supersede any existing county or municipal ordinance, rule or regulation requiring certification or licensure of companies and persons engaged in alarm contracting, and such ordinances, rules and regulations shall be null, void and of no effect.

(3) Additionally, this chapter shall supersede any existing county or municipal ordinance, rule or regulation requiring certification or licensure of companies and persons engaged in alarm contracting, closed-circuit video system contracting or electronic access control system contracting and such ordinances, rules and regulations shall be null, void and of no effect.

SOURCES: Laws, 2006, ch. 528, § 14; Laws, 2014, ch. 525, § 12, eff from and after July 1, 2014.

§ 73-69-29. Injunction for violation of chapter.

(1) In addition to the penalties otherwise provided for by this chapter, the State Fire Marshal may cause to issue in any court of competent jurisdiction an injunction without bond enjoining any person from violating or continuing to violate the provisions of this chapter.

(2) In the suit for an injunction, the State Fire Marshal may demand of the defendant a penalty of Fifty Dollars ($50.00) per day for each violation, reasonable attorney fees and court costs. Judgment for penalty, attorney fees and court costs may be rendered in the same judgment in which the injunction is made absolute.

SOURCES: Laws, 2006, ch. 528, § 15, eff from and after July 1, 2006.

Cross References — Offenses and penalties, see §§ 73-69-23, 73-69-25.
Additional penalties for violation of § 73-69-31, see § 73-69-31.

§ 73-69-31. Alarm contracting company to return electronic protective system codes to factory default setting under specified circumstances; revocation of license; civil fines.

(1) Each alarm contracting company engaged in alarm contracting who sells an electronic protective system to a consumer shall immediately return the lockout, installer or programming code of the electronic protective system to the factory default setting when the consumer cancels the contract with the alarm contracting company and contracts with another alarm contracting company provided all contractual obligations are fulfilled.

(2) In addition to the penalties provided in this chapter, any alarm contracting company who violates this section shall have its license revoked and be subject to a civil fine by the State Fire Marshal of not less than Five Hundred Dollars ($500.00) nor more than Two Thousand Dollars ($2,000.00) per occurrence.

SOURCES: Laws, 2006, ch. 528, § 16; Laws, 2014, ch. 525, § 13, eff from and after July 1, 2014.

Cross References — Offenses and penalties, see §§ 73-69-23, 73-69-25.
Injunction for violation of this chapter, see § 73-69-29.

§ 73-69-33. Appeal process.

Any person aggrieved by any action or decision of the State Fire Marshal under the provisions of this chapter may appeal therefrom, within thirty (30) days after receipt of notice thereof to the Chancery Court of the First Judicial District of Hinds County by certiorari in the manner provided by law. Such appeal shall be without supersedeas except that the court may grant supersedeas as otherwise provided by law here the license is revoked. The court shall have the authority and jurisdiction to hear the appeal and render its decision in regard thereto in termtime or vacation.

SOURCES: Laws, 2014, ch. 525, § 14, eff from and after July 1, 2014.

§ 73-69-35. Subpoena and examination of witnesses.

For the purposes of making such investigations as he may deem necessary for the proper administration of this chapter, the State Fire Marshal shall have the inquisitorial powers and shall be empowered to subpoena witnesses and examine them under oath, provided that all testimony, documents and other evidence required to be submitted to the State Fire Marshal pursuant to this chapter shall be privileged and shall not be admissible as evidence in any other proceeding.

SOURCES: Laws, 2014, ch. 525, § 15, eff from and after July 1, 2014.

CHAPTER 71

Acupuncture Practice Act

Sec.
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§ 73-71-1. Short title.

This chapter shall be known and may be cited as the "Acupuncture Practice Act." Whenever a reference is made to the Acupuncture Practice Act by the provisions of any statute, it is to be construed as referring to the provisions of this chapter.

SOURCES: Laws, 2009, ch. 447, § 1; reenacted without change, Laws, 2013, ch. 465, § 1, eff from and after July 1, 2013.

§ 73-71-3. Legislative intent; purposes.

(1) In its concern with the need to eliminate the fundamental causes of illness and with the need to treat the whole person, the Legislature intends to establish in this chapter a framework for the practice of the art and science of acupuncture.

(2) The purposes of this chapter are to encourage the effective utilization of the skills relative to practitioners of acupuncture by citizens desiring their services; to remove the existing legal constraints that unnecessarily hinder the effective provision of health care services; and to subject individuals practicing acupuncture to regulation and control as a primary and independent health care profession.

SOURCES: Laws, 2009, ch. 447, § 2; reenacted without change, Laws, 2013, ch. 465, § 2, eff from and after July 1, 2013.

§ 73-71-5. Definitions.

As used in this chapter, unless the context otherwise requires, the following terms shall have the following meanings:

(a) "Accredited college of acupuncture" means any college, school or division of a university or college that offers the degree of Master of Science in Oriental Medicine (MSOM) or its equivalent and that is accredited by the Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM).

(b) "Acupuncturist" means a person who has received a professional degree from a college of acupuncture and Oriental medicine.

(c) "Acupuncturist-patient relationship" means that the acupuncturist has assumed the responsibility for making clinical judgments regarding the health of the patient and the need for medical treatment, and the patient has agreed to follow the acupuncturist's instructions.

(d) "Acupuncture practitioner" means a practitioner licensed under this chapter to practice the techniques of acupuncture in this state and includes the term "acupuncturist."

(e) "Advisory council" means the Mississippi Council of Advisors in Acupuncture established in this chapter.

(f) "Board" means the State Board of Medical Licensure established in Section 73-43-1 et seq.

(g) "Complementary and integrative therapies" means a heterogeneous group of preventive, diagnostic and therapeutic philosophies and practices, which at the time they are performed may differ from current scientific knowledge, or whose theoretical basis and techniques may diverge from western medicine routinely taught in accredited medical colleges, or both.

These therapies include, but are not limited to, acupuncture, acutherapy and acupressure.

(h) "Impaired practitioner" means a practitioner who is unable to practice acupuncture with reasonable skill and safety because of a physical or mental disability as evidenced by a written determination from a competent authority or written consent based on clinical evidence, including deterioration of mental capacity, loss of motor skills, or abuse of drugs or alcohol of sufficient degree to diminish the person's ability to deliver competent patient care.

(i) "Informed consent" means the acupuncture practitioner has informed the patient, in a manner that would be understood by a reasonable person, of the diagnostic and treatment options, risk assessment and prognosis and has provided the patient with an estimate of the charges for treatment to be rendered and the patient has consented to the recommended treatment.

(j) "NCCAOM" means the National Certification Commission for Acupuncture and Oriental Medicine.

(k) "Physician" means a doctor of medicine or osteopathy who is legally authorized to practice medicine in the State of Mississippi.

(*l*) "Practice of acupuncture" means:

(i) To treat, correct, change, alleviate or prevent disease, illness, pain, deformity, defect, injury or other physical or mental conditions by the techniques of acupuncture, including:

1. The administering or applying of an apparatus or other therapeutic technique as defined in this chapter; or

2. The using of complementary and integrative therapies as defined in this chapter; or

3. The rendering of advice or recommendation by any means including telephonic and other electronic communications with regard to any of the above.

(ii) To represent, directly or indirectly, publicly or privately, an ability and willingness to do an act described in this paragraph.

(iii) To use any title, words, abbreviation or letters in a manner or under circumstances that induce the belief that the person using them is qualified to do any act described in this paragraph.

(m) "Techniques of acupuncture" includes acupuncture, moxibustion or heating modalities, cupping, magnets, ion pumping cords, electroacupuncture including electrodermal assessment, application of cold packs, dietary, nutritional and lifestyle counseling, manual therapy (Tui Na), massage, breathing and exercise techniques, the administration of any herb and nutritional supplement and meridian therapy. The terms used in this paragraph are defined as follows:

(i) "Acupuncture" means the insertion and manipulation of needles to the body, and the use of Oriental medicine and other modalities and procedures at specific locations on the body, for the prevention or correction of any disease, illness, injury, pain or other condition.

(ii) "Cupping" means the heating of air or mechanical creation of suction in a cup, application to specific locations on the body to induce local vasodialation and mechanical expansion of underlying tissue.

(iii) "Ion pumping cords" means the application of wires containing diodes to acupuncture needles that have been placed on the body.

(iv) "Magnets" means the application of magnets to specific locations on the body.

(v) "Electroacupuncture including electrodermal assessment" means the use of electronic biofeedback, and electrostimulation instruments.

(vi) "Cold packs" means the application of cold packs and ice to specific locations on the body to reduce heat conditions or inflammation in surface tissues of the body.

(vii) "Dietary, nutritional and lifestyle counseling" means in depth patient interviews and counseling to determine whether poor dietary, lifestyle or nutritional practices are a factor in a patient's illness and to educate toward a healthier lifestyle.

(viii) "Manual therapy (Tui Na) and massage" means mobilization of skeletal and soft tissues.

(ix) "Breathing and exercise techniques" means the use of Qi Gong and other techniques of therapeutic breathing and exercise.

(x) "Administration of herbal and botanical substances" means the administration of herbs of animal, vegetable or mineral origin for health maintenance and the treatment of effects of disease.

(xi) "Vitamin, mineral or nutritional supplement" means a nutritional substance, including a concentrate or extract of such a substance.

(xii) "Devices for meridian therapy" means all assessment and/or treatment devices for use with acupuncture meridians.

SOURCES: Laws, 2009, ch. 447, § 3; reenacted without change, Laws, 2013, ch. 465, § 3, eff from and after July 1, 2013.

Cross References — Mississippi Council of Advisors in Acupuncture, see § 73-71-11.
Program of care, counseling or treatment for impaired acupuncturists, as defined in this section, see § 73-71-39.

§ 73-71-7. Evaluation of patient by physician required within six months before date of performing acupuncture; patient must sign form stating patient was evaluated within the prescribed time; exceptions; practitioner to provide certain information to patient.

All of the following shall apply to an acupuncture practitioner who is licensed to practice in Mississippi:

(a) Except as otherwise provided in paragraph (c), the practitioner may perform acupuncture on a patient only if the patient was evaluated by a physician, as appropriate, for the condition being treated within six (6) months before the date that acupuncture is performed. The State Board of

Medical Licensure, with advice from the Mississippi Council of Advisors in Acupuncture, may by rule modify the scope of the evaluation under this paragraph or the period during which treatment must begin under this paragraph.

(b) The practitioner must obtain a written statement signed by the patient on a form prescribed by the State Board of Medical Licensure stating that the patient has been evaluated by a physician within the prescribed time. The form must contain a clear statement that the patient should be evaluated by a physician for the condition being treated by the practitioner.

(c) Notwithstanding the provisions of paragraph (a), a practitioner may, without an evaluation from a physician, perform acupuncture on a patient for:

(i) Smoking addiction;

(ii) Weight loss; or

(iii) Substance abuse, to the extent permitted by regulations adopted by the State Board of Medical Licensure, with advice from the Mississippi Council of Advisors in Acupuncture.

(d) Before treating a patient, the practitioner shall advise the patient that acupuncture is not a substitute for conventional medical diagnosis and treatment and shall obtain the informed consent of the patient.

(e) On initially meeting a patient in person, the practitioner shall provide in writing the practitioner's name, business address, and business telephone number, and information on acupuncture, including the techniques that are used.

(f) While treating a patient, the practitioner shall not make a diagnosis. If a patient's condition is not improving or a patient requires emergency medical treatment, the practitioner shall consult promptly with a physician.

SOURCES: Laws, 2009, ch. 447, § 4; reenacted without change, Laws, 2013, ch. 465, § 4; Laws, 2017, ch. 391, § 1, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment rewrote (a), which read: "The practitioner shall perform the technique of acupuncture for a patient only if the patient has received a written referral or prescription for acupuncture from a physician. As specified in the referral or prescription, the acupuncturist shall provide reports to the physician on the patient's condition or progress in treatment and comply with the conditions or restrictions on the acupuncturist's course of treatment"; rewrote (b), which read: "The practitioner shall perform the technique of acupuncture under the general supervision of the patient's referring or prescribing physician. General supervision does not require that the acupuncturist and physician practice in the same office"; added (c); and redesignated former (c) through (e) as (d) through (f).

§ 73-71-9. Repealed.

Repealed by Laws, 2017, ch. 391, § 2, effective July 1, 2017.

§ 73-71-9. [Laws, 2009, ch. 447, § 5; reenacted without change, Laws, 2013, ch. 465, § 5, eff from and after July 1, 2013.]

Editor's Note — Former § 73-71-9 provided for physician referral to and supervision of acupuncture practitioners.

§ 73-71-11. Mississippi Council of Advisors in Acupuncture created; membership, organization and operation; compensation; annual report.

(1) There is hereby established the Mississippi Council of Advisors in Acupuncture to aid the State Board of Medical Licensure in administering the provisions of this chapter.

(2) The council shall consist of three (3) persons appointed by the Executive Director of the State Medical Licensure Board to be selected from a list of six (6) nominees of the Mississippi Oriental Medicine Association. Members of the council shall either be acupuncture practitioners who are not medical, osteopathic or chiropractic doctors or surgeons, or medical doctors who are registered to practice acupuncture or qualify as an acupuncture practitioner.

(3) The initial members of the council shall be appointed by the Governor for staggered terms as follows: one (1) member shall be appointed for a term ending on July 1, 2011, and two (2) members shall be appointed for terms ending on July 1, 2012. After the expiration of the initial terms, each successor member shall be appointed for a term of three (3) years. A vacancy shall be filled by appointment by the Governor for the remainder of the unexpired term. Council members shall serve until their successors have been appointed and qualified.

(4) No council member shall serve more than two (2) consecutive full terms, and any member failing to attend three (3) consecutive meetings after proper notice has been given by the council shall automatically be removed as a council member, unless excused for reasons set forth in council regulations.

(5) The Governor may remove any member from the council for neglect of any duty required by law, for incompetence, for improper or unprofessional conduct as defined by board regulations, for conflict of interest, or for any reason that would justify the suspension or revocation of his or her license to practice acupuncture.

(6) A majority of the members of the council shall constitute a quorum to conduct business. It shall require an affirmative vote of a majority of those members present at a meeting to take any action or pass any motion. The council shall, not later than September 1, 2009, and annually thereafter in the month of July, hold a meeting and elect from its membership a chairman and vice chairman. The council shall meet at any other times as it deems necessary or advisable by the chairman, a majority of its members, or the Governor. Reasonable notice of all meetings shall be given in the manner prescribed by the Open Meetings Law (Section 25-3-41 et seq.). Members of the council are not liable to civil action for any act performed in good faith in the execution of duties as a council member.

(7) Members of the council shall be reimbursed for expenses and mileage as provided in Section 25-3-41, but shall receive no other compensation, perquisite or allowance for service on the council.

(8) The council shall report annually to the Legislature statistics regarding the number of licensees, results of the licensing examinations, and violations investigated during the previous year.

SOURCES: Laws, 2009, ch. 447, § 6; reenacted without change, Laws, 2013, ch. 465, § 6, eff from and after July 1, 2013.

Cross References — State board of medical licensure, generally, see §§ 73-43-1 et seq.

§ 73-71-13. State Board of Medical Licensure empowered to promulgate rules and regulations governing acupuncture; board's authority and responsibilities.

(1) The State Board of Medical Licensure is hereby empowered, authorized and directed to adopt, amend, promulgate and enforce such rules, regulations and standards governing the practice of acupuncture as may be necessary to further the accomplishment of the purpose of this chapter, and in so doing shall utilize as the basis thereof the corresponding recommendations of the advisory council.

(2) The board's authority and responsibility include the following:

(a) Grant, deny, renew, restrict, suspend or revoke licenses to practice acupuncture in accordance with the provisions of this chapter or other applicable state law;

(b) Examine by established protocol the qualifications and fitness of applicants for a license to practice acupuncture in this state;

(c) Conduct investigations of suspected violations of this chapter to determine whether there are sufficient grounds to initiate disciplinary proceedings;

(d) Inspect premises and equipment, on a triennial basis and assess an inspection fee in the amount of One Hundred Dollars ($100.00) per inspection and an additional fee of Fifty Dollars ($50.00) for each licensed acupuncturist employed by the inspected establishment;

(e) Hold hearings on all matters properly brought before the board, to administer oaths, receive evidence, make necessary determinations and enter orders consistent with the findings. The board may require by subpoena the attendance and testimony of witnesses and the production of papers, records or other documentary evidence and commission depositions. The board may designate one or more of its members to serve as its hearing officer. The board shall adopt rules and regulations for hearings before the board and the rules shall afford any person appearing before the board the safeguards of procedural due process. Formal rules of evidence shall not apply;

(f) Contract with independent consultants or other appropriate agencies to administer examinations for licensure, according to the provisions of this chapter, and establish a fee for such examination not to exceed Five Hundred Dollars ($500.00);

(g) Establish and publish a schedule of fees for annual licensing, certification and renewal not to exceed Four Hundred Dollars ($400.00) annually; and

(h) Keep and maintain accurate records of all board business in accordance with state law.

The powers enumerated in this section are granted for the purpose of enabling the board to supervise effectively the practice of acupuncture and are to be construed liberally to accomplish this objective.

SOURCES: Laws, 2009, ch. 447, § 7; reenacted without change, Laws, 2013, ch. 465, § 7, eff from and after July 1, 2013.

Cross References — State board of medical licensure, generally, see §§ 73-43-1 et seq.

§ 73-71-15. Prohibition against unlicensed practice of acupuncture unless exempt from licensure.

Unless licensed as an acupuncture practitioner under this chapter, or exempt from licensure under the provisions of this chapter, no person shall practice or hold himself or herself out as practicing or engaging in the practice of acupuncture, either for compensation or gratuitously.

SOURCES: Laws, 2009, ch. 447, § 8; reenacted without change, Laws, 2013, ch. 465, § 8, eff from and after July 1, 2013.

Cross References — Prohibition against practicing acupuncture without a license, see § 73-71-37.

Penalties for practicing acupuncture without a license, see § 73-71-37.

§ 73-71-17. Acupuncture practitioner license authorizes practice of acupuncture; construction of chapter.

(1) An acupuncture practitioner license authorizes the holder to engage in the practice of acupuncture.

(2) This chapter shall not be construed to limit, interfere with, or prevent any other class of licensed health care professionals from practicing within the scope of their licenses as defined by each profession's state licensing statute.

(3) This chapter shall not be construed to make unlawful the activities of persons involved in research performed under the auspices of a federal or state regulated research institution.

(4) The practice and techniques of acupuncture shall not include the practice of physical therapy as defined in the Mississippi Physical Therapy Practice Law, Title 73, Chapter 23 of the Mississippi Code of 1972.

SOURCES: Laws, 2009, ch. 447, § 9; reenacted without change, Laws, 2013, ch. 465, § 9, eff from and after July 1, 2013.

§ 73-71-19. Qualifications for licensure; examination; subjects of examination; fingerprint-based criminal history records check required.

(1) No person shall be licensed to practice acupuncture unless he or she has passed an examination and/or has been found to have the necessary qualifications as prescribed in the regulations adopted by the board.

(2) Before any applicant is eligible for an examination or qualification, he or she shall furnish satisfactory proof that he or she:

(a) Is a citizen or permanent resident of the United States;

(b) Has demonstrated proficiency in the English language;

(c) Is at least twenty-one (21) years of age;

(d) Is of good moral character;

(e) Has completed a program of acupuncture and has received a certificate or diploma from an institute approved by the board, according to the provisions of this chapter;

(f) Has completed a clinical internship training as approved by the board; and

(g) Has received training in cardiopulmonary resuscitation (CPR).

(3) The board may hold an examination at least once a year, and all applicants shall be notified in writing of the date and time of all examinations. The board may use a NCCAOM examination if it deems that national examination to be sufficient to qualify a practitioner for licensure in this state. In no case shall the state's own examination be less rigorous than the nationally recognized examination.

(4) In addition to the written examination, if the nationally recognized examination does not provide a suitable practical examination comparable to board standards, the board shall examine each applicant in the practical application of Oriental medical diagnostic and treatment techniques in a manner and by methods that reveal the applicant's skill and knowledge.

(5) The board shall require all qualified applicants to be examined in the following subjects:

(a) Anatomy and physiology;

(b) Pathology;

(c) Diagnosis;

(d) Hygiene, sanitation and sterilization techniques;

(e) All major acupuncture principles, practices and techniques; and

(f) Clean Needle Technique Exam.

(6) To assist the board in conducting its licensure investigation, all applicants shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose. Any and all state or national criminal history records information

obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency. The board shall provide to the department the fingerprints of the applicant, any additional information that may be required by the department, and a form signed by the applicant consenting to the check of the criminal records and to the use of the fingerprints and other identifying information required by the state or national repositories. The board shall charge and collect from the applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant.

(7) The board shall issue a license to every applicant whose application has been filed with and approved by the board and who has paid the required fees and who either:

(a) Has passed the board's written examination and practical examination, with a score of not less than seventy percent (70%) on each examination; or

(b) Has achieved a passing score on a board approved nationally recognized examination, which examination includes a written and practical portion, as determined by the board; or

(c) Has received certification from a board approved national certification process; or

(d) Has achieved a passing score on a board approved nationally recognized written examination and has passed the board's practical examination with a score of not less than seventy percent (70%).

(8) The board shall keep a record of all examinations held, together with the names and addresses of all persons taking examinations, and the examination results. Within forty-five (45) days after the examination, the board shall give written notice of the results of the examination to each applicant.

SOURCES: Laws, 2009, ch. 447, § 10; Laws, 2013, ch. 465, § 10, eff from and after July 1, 2013.

§ 73-71-21. License without examination; requirements; reciprocity.

The board may, at its discretion, issue a license without examination to an acupuncture practitioner who has been licensed, certified or otherwise formally legally recognized as an acupuncturist or acupuncture practitioner in any state or territory if all three (3) of the following conditions are met to its satisfaction:

(a) The applicant meets the requirements of practice in the state or territory in which the applicant is licensed, certified, or registered as an acupuncturist or acupuncture practitioner;

(b) The requirements for practice in the state or territory in which the applicant is licensed, certified or registered as an acupuncturist or acupuncture practitioner are at least as stringent as those of this state; and

(c) The state or territory in which the applicant is licensed, certified or legally recognized as an acupuncturist or acupuncture practitioner permits an acupuncture practitioner licensed in this state to practice acupuncture or acupuncture in that jurisdiction by credentials examination.

The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 2009, ch. 447, § 11; , Laws, 2013, ch. 350, § 45; reenacted without change, Laws, 2013, ch. 465, § 11, eff from and after July 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (c). The words "or acupuncture" were deleted preceding the words "in that jurisdiction by credentials examination." The Joint Committee ratified the correction at its July 13, 2009, meeting.

Section 45 of ch. 350, Laws of 2013, effective from and after July 1, 2013 (approved March 18, 2013), amended this section. Section 11 of ch. 465, Laws of 2013, effective from and after July 1, 2013 (approved March 26, 2013), reenacted the section without change. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at its August 1, 2013, meeting.

§ 73-71-23. Continuing education requirements.

(1) The board shall establish, by regulation, mandatory continuing education requirements for acupuncture practitioners licensed in this state, including the following:

(a) Each person licensed under this chapter, whether or not residing within the state, shall complete thirty (30) hours of continuing education within each biennial renewal period, except during the initial biennial renewal period; and

(b) Each person not obtaining the required number of hours of continuing education may have his or her license renewed for just cause, as determined by the board, so long as the board requires that the deficient hours of continuing education, and all unpaid fees, are made up during the following renewal period in addition to the current continuing education requirements for the renewal period. If any acupuncture practitioner fails to make up the deficient hours and complete the later renewal period, or fails to make up any unpaid fees, then his or her license shall not be renewed until all fees are paid and all of the required hours are completed and documented to the board.

(2) The board shall establish by regulation education standards and record keeping requirements for continuing education providers. A provider of continuing education courses shall apply to the board for approval to offer continuing education courses for credit toward this requirement on a form developed by the board, shall pay a fee covering the cost of approval and for monitoring of the provider by the board. Institutions, associations and individuals providing continuing education shall maintain records of attendance, including sign-in sheets, for a period of three (3) years.

SOURCES: Laws, 2009, ch. 447, § 12; reenacted without change, Laws, 2013, ch. 465, § 12, eff from and after July 1, 2013.

§ 73-71-25. Approval of schools and colleges offering education and training in the practice of acupuncture; standards of professional education.

(1) The board shall establish standards for approval of schools and colleges offering education and training in the practice of acupuncture.

(2) Before approval of an institute of acupuncture, the board shall determine that the institute meets standards of professional education. These standards shall provide that the institute:

(a) Require, as a prerequisite to graduation, a program of study of at least two thousand five hundred (2,500) hours;

(b) Meet the minimum requirements of a board approved national accrediting body;

(c) Require participation in a carefully supervised clinical or internship program; and

(d) Confer a certificate, diploma or degree in acupuncture only after personal attendance in classes and clinics.

SOURCES: Laws, 2009, ch. 447, § 13; reenacted without change, Laws, 2013, ch. 465, § 13, eff from and after July 1, 2013.

§ 73-71-27. Effect of chapter on acupuncturist licensed, certified or registered under prior law; prohibition against performing professional responsibilities not qualified to perform; penalties for violation; liability insurance to be maintained.

(1) Any acupuncturist validly licensed, certified or registered under prior law of this state shall be deemed as licensed under the provisions of this chapter.

(2) All acupuncturists licensed under this section shall not accept or perform professional responsibilities that the licensee knows or has reason to know that the person is not qualified by training, experience or certification to perform. Violation of this section shall subject the licensee to the revocation or

suspension of his or her license. The board shall make regulations on those requirements and shall grant previously licensed, certified or registered acupuncturists qualification on a case-by-case basis.

(3) The board shall require each licensee to obtain and maintain an adequate amount of professional liability insurance and provide proof of that insurance to the board.

SOURCES: Laws, 2009, ch. 447, § 14; reenacted without change, Laws, 2013, ch. 465, § 14, eff from and after July 1, 2013.

Cross References — Licensee accepting or performing professional responsibilities that the licensee knows or has reason to know he or she is not qualified to perform as grounds for disciplinary action, see § 73-71-33.

Penalties if found guilty of any of the acts set forth in § 73-71-33, see § 73-71-35.

§ 73-71-29. Licensee reporting and record keeping requirements.

(1) Persons licensed under this chapter shall be subject to the following reporting requirements:

(a) All morbidity, mortality, infectious disease, abuse and neglect reporting requirements of this state;

(b) Reporting completion of the required continuing education study to the board with his or her license renewal;

(c) Notification of the board in writing of any change of address within thirty (30) days of the change;

(d) Notification of the board in writing of termination or temporary closing of the licensee's practice if the cessation of business is expected to be over ninety (90) days, or otherwise limit access to patient records. The licensee shall notify the board upon resuming practice; and

(e) Posting his or her license in a conspicuous location in his or her place of practice at all times.

(2) Persons licensed under this chapter shall be subject to the following record keeping requirements:

(a) Maintenance of accurate records of each patient that he or she treats. The records shall include the name of the patient, medical history, subjective symptoms, objective findings and treatment rendered;

(b) Maintenance of patient records for a period of seven (7) years; and

(c) Maintenance of documents proving completion of required continuing education study for a period of three (3) years.

SOURCES: Laws, 2009, ch. 447, § 15; reenacted without change, Laws, 2013, ch. 465, § 15, eff from and after July 1, 2013.

Cross References — Failure to keep written medical records justifying course of treatment or making or filing a false report or intentionally or negligently failing to file a requisite report as grounds for disciplinary action, see § 73-71-33.

Penalties if found guilty of any of the acts set forth in § 73-71-33, see § 73-71-35.

§ 73-71-31. Compliance with applicable public health laws required; requisite practices.

(1) Acupuncture practitioners shall comply with all applicable public health laws of this state.

(2) Sanitation practices shall include:

(a) Hands shall be washed with soap and water or other disinfectant between treatment of different patients;

(b) Skin in the area of penetration shall be swabbed with alcohol or other germicidal solution before inserting needles;

(c) Needles and other equipment used in the practice of acupuncture shall be sterilized before using;

(d) Needles and other hazardous waste shall be disposed of in a manner prescribed by law; and

(e) Other sanitation practices shall be observed to insure health and safety of patients, as prescribed by the board.

SOURCES: Laws, 2009, ch. 447, § 16; reenacted without change, Laws, 2013, ch. 465, § 16, eff from and after July 1, 2013.

Cross References — Failure to comply with public health laws, including applicable laws prescribing the manner of disposal of needles and other hazardous waste as grounds for disciplinary action, see § 73-71-33.

Penalties if found guilty of any of the acts set forth in § 73-71-33, see § 73-71-35.

§ 73-71-33. Grounds for disciplinary actions.

The following acts constitute grounds for which the board may initiate disciplinary actions:

(a) Attempting to obtain, or renewing a license to practice acupuncture by bribery or misinterpretation;

(b) Having a license to practice acupuncture revoked, suspended, or otherwise acted against, including the denial of licensure by the licensing authority of another state or territory for reasons that would preclude licensure in this state;

(c) Being convicted or found guilty, regardless of adjudication, in any jurisdiction of a felony, or a crime of moral turpitude, or a crime that directly relates to acupuncture. For the purposes of this paragraph, a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction;

(d) Advertising, practicing, or attempting to practice under a name other than one's own;

(e) The use of advertising or solicitation that is false or misleading;

(f) Aiding, assisting, procuring, employing or advertising an unlicensed person to practice acupuncture contrary to this chapter or a rule of the board;

(g) Failing to perform any statutory or legal obligation placed upon an acupuncture practitioner;

(h) Making or filing a report that the licensee knows to be false, intentionally or negligently failing to file a report required by state or federal law, willfully impeding or obstructing that filing or inducing another person to do so. Those reports shall include only those that are signed in the capacity of an acupuncture practitioner;

(i) Exercising coercion, intimidation or undue influence in entering into sexual relations with a patient, or continuing the patient-practitioner relationship with a patient with whom the licensee has sexual relations, if those sexual relations cause the licensee to perform services incompetently. This paragraph shall not apply to sexual relations between acupuncture practitioners and their spouses;

(j) Making deceptive, untrue or fraudulent misrepresentations in the practice of acupuncture;

(k) Soliciting patients, either personally or through an agent, through the use of fraud, intimidation or undue influence, or a form of overreaching conduct;

(*l*) Failing to keep written medical records justifying the course of treatment of the patient;

(m) Exercising undue influence on the patient to exploit the patient for financial gain of the licensee or of a third party;

(n) Being unable to practice acupuncture with reasonable skill and safety to patients by reason of illness or intemperate use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;

(o) Malpractice or the failure to practice acupuncture to that level of care, skill and treatment that is recognized by a reasonably prudent similar practitioner of acupuncture as being acceptable under similar conditions and circumstances;

(p) Practicing or offering to practice beyond the scope permitted by law or accepting or performing professional responsibilities that the licensee knows or has reason to know that he or she is not qualified by training, experience or certification to perform;

(q) Delegating professional responsibilities to a person when the licensee delegating those responsibilities knows, or has reason to know, that the person is not qualified by training, experience or licensure to perform them;

(r) Violating any provision of this chapter, a rule of the board, or a lawful order of the board previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the board;

(s) Conspiring with another to commit an act, or committing an act, that coerces, intimidates or precludes another licensee from lawfully advertising or providing his or her services;

(t) Fraud or deceit, or gross negligence, incompetence or misconduct in the operation of a course of study;

(u) Failing to comply with state, county or municipal regulations or reporting requirements relating to public health and the control of contagious and infectious disease;

(v) Failing to comply with any rule of the board relating to health and safety, including, but not limited to, sterilization of equipment and the disposal of potentially infectious materials;

(w) Incompetence, gross negligence or other malpractice in the practice of acupuncture;

(x) Aiding the unlawful practice of acupuncture;

(y) Fraud or dishonesty in the application or reporting of any test for disease;

(z) Failure to report, as required by law, or making false or misleading report of, any contagious or infectious disease;

(aa) Failure to keep accurate patient records; or

(bb) Failure to permit the board or its agents to enter and inspect acupuncture premises and equipment as set by rules promulgated by the board.

SOURCES: Laws, 2009, ch. 447, § 17; reenacted without change, Laws, 2013, ch. 465, § 17, eff from and after July 1, 2013.

Cross References — Prohibition against licensee accepting or performing professional responsibilities that the licensee knows or has reason to know he or she is not qualified to perform, see § 73-71-27.

Reporting and record keeping requirements, see § 73-71-29.

Compliance with public health laws, including applicable laws prescribing the manner of disposal of needles and other hazardous waste, required, see § 73-71-31.

Penalties if found guilty of any of the acts set forth in this section, see § 73-71-35.

§ 73-71-35. Disciplinary proceedings; penalties; order to compel mental or physical examination.

(1) Disciplinary proceedings under this chapter shall be conducted in the same manner as other disciplinary proceedings are conducted by the State Board of Medical Licensure.

(2) When the board finds any person guilty of any of the acts set forth in Section 73-71-33, it may then enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the board an application for licensure;

(b) Revocation or suspension of a license;

(c) Restriction of practice;

(d) Imposition of an administrative fine not to exceed One Thousand Dollars ($1,000.00) for each count or separate offense;

(e) Issuance of a reprimand;

(f) Placement of the acupuncture practitioner on probation for a period of time and subject to the conditions as the board may specify.

(3) In enforcing this chapter, upon finding of the board that probable cause exists to believe that the licensee is unable to serve as an acupuncture practitioner because of committing any of the acts set forth in Section 73-71-33 or any of the crimes set forth in Section 73-71-37, the board shall have to issue an order to compel the licensee to submit to a mental or physical examination

by a physician designated by the board. If the licensee refuses to comply with the order, the board's order directing the examination may be enforced by filing a petition for enforcement in any court of competent jurisdiction. The licensee against whom the petition is filed shall not be named or identified by initials in any public court record or document, and the proceedings shall be closed to the public unless the licensee stipulates otherwise. The board shall be entitled to the summary procedure provided in applicable state law. An acupuncture practitioner affected under this subsection shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice of acupuncture with reasonable skill and safety of the patients. In any proceeding under this subsection, neither the record of proceedings nor the orders entered by the board shall be used against the acupuncture practitioner in any other proceeding.

(4) The board shall not reinstate the license of an acupuncture practitioner, or cause a license to be issued to a person it has deemed to be unqualified, until such time as the board is satisfied that he or she has complied with all the terms and conditions set forth in the final order and that he or she is capable of safely engaging in the practice of acupuncture.

SOURCES: Laws, 2009, ch. 447, § 18; reenacted without change, Laws, 2013, ch. 465, § 18, eff from and after July 1, 2013.

§ 73-71-37. Prohibited acts; penalties.

(1) It is unlawful for any person to:

(a) Hold himself or herself out as an acupuncture practitioner unless licensed as provided in this chapter;

(b) Practice acupuncture, or attempt to practice acupuncture, without an active license or as otherwise permitted by board rule established under the authority of this chapter;

(c) Obtain, or attempt to obtain, a license to practice acupuncture by fraud or misrepresentation; or

(d) Permit an employed person to engage in the practice of acupuncture unless the person holds an active license as a practitioner of acupuncture, except as provided by this chapter.

(2) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for not more than six (6) months, or both.

SOURCES: Laws, 2009, ch. 447, § 19; reenacted without change, Laws, 2013, ch. 465, § 19, eff from and after July 1, 2013.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 73-71-39. Board to establish program of care, counseling or treatment for impaired acupuncturists.

(1) The board shall establish a program of care, counseling or treatment for impaired acupuncturists.

(2) The program of care, counseling or treatment shall include a written schedule of organized treatment, care, counseling, activities or education satisfactory to the board designed for the purposes of restoring an impaired person to a condition by which the impaired person can practice acupuncture with reasonable skill and safety of a sufficient degree to deliver competent patient care.

(3) All persons authorized to practice by the board shall report in good faith any acupuncturist they reasonably believe to be an impaired practitioner as defined in Section 73-71-5.

SOURCES: Laws, 2009, ch. 447, § 20; reenacted without change, Laws, 2013, ch. 465, § 20, eff from and after July 1, 2013.

Cross References — Impaired acupuncturist defined, see § 73-71-5.

§ 73-71-41. Confidentiality of patient care information; waiver of privilege.

(1) No licensed acupuncturist shall disclose any information concerning the licensed acupuncturist's care of a patient except on written authorization or by waiver by the licensed acupuncturist's patient or by court order, by subpoena, or as otherwise provided in this section.

(2) Any licensed acupuncturist releasing information under written authorization or other waiver by the patient or under court order, by subpoena, or as otherwise provided by this section shall not be liable to the patient or any other person.

(3) The privilege provided by this section shall be waived to the extent that the licensed acupuncturist's patient places the licensed acupuncturist's care and treatment of the patient or the nature and extent of injuries to the patient at issue in any civil criminal proceeding.

SOURCES: Laws, 2009, ch. 447, § 21; reenacted without change, Laws, 2013, ch. 465, § 21, eff from and after July 1, 2013.

§ 73-71-43. License renewal; fees.

Each licensee shall be required to pay biennial license renewal fees and meet continuing education requirements as provided in this chapter.

SOURCES: Laws, 2009, ch. 447, § 22; reenacted without change, Laws, 2013, ch. 465, § 22, eff from and after July 1, 2013.

§ 73-71-45. Renewal of expired license within four years after expiration; requirements for obtaining new license after four years after expiration.

(1) A license that has expired may be renewed at any time within ninety (90) days after its expiration upon filing of an application for renewal on a form provided by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is not renewed within ninety (90) days after its expiration, the acupuncture practitioner, as a condition precedent to renewal, shall pay the renewal fees plus a late fee to be set by the board.

(2) A person who fails to renew his or her license within four (4) years after its expiration may not renew that license, and it may not be restored, reissued or reinstated after that time; but that person may apply for and obtain a new license if he or she meets the following requirements:

(a) Takes and passes a suitable examination, or demonstrates continued practice and continuing education acceptable to the board; and

(b) Pays all fees that would be required if an initial application for licensure were being made.

SOURCES: Laws, 2009, ch. 447, § 23; reenacted without change, Laws, 2013, ch. 465, § 23, eff from and after July 1, 2013.

Cross References — Prohibition against practicing acupuncture without a license, see § 73-71-37.

Penalties for practicing acupuncture without a license, see § 73-71-37.

§ 73-71-47. Request by licensee to have license placed on inactive status; reinstatement.

At any time while a license is valid, or expired but not lapsed, the licensee may request that his or her license be placed on inactive status. While on inactive status, the licensee is not subject to fees or continuing education requirements. As a condition of reinstatement, the licensee must satisfy the following requirements:

(a) Demonstrate that he or she has not committed any acts or crimes constituting grounds for denial of licensure under any provisions of this chapter;

(b) Pay fees to reactivate status as designated by the board;

(c) Meet continuing education requirements equivalent to those that would have been met in the preceding two (2) years; and

(d) Establish to the satisfaction of the board that, with due regard for the public interest, he or she is qualified to practice as an acupuncture practitioner.

SOURCES: Laws, 2009, ch. 447, § 24; reenacted without change, Laws, 2013, ch. 465, § 24, eff from and after July 1, 2013.

§ 73-71-49. Suspended license subject to expiration and can be renewed; revoked license subject to expiration but cannot be renewed; reinstatement fees.

(1) A suspended license is subject to expiration and shall be renewed as provided in this chapter, but while the license remains suspended, and until it is reinstated, the renewal does not entitle the practice of acupuncture, or any other activity or conduct in violation of the order of the board by which the license was suspended.

(2) A revoked license is subject to expiration as provided in this chapter but it may not be renewed. If it is reinstated after its expiration, the former licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal fee date, if any, accrued at the time of its expiration.

SOURCES: Laws, 2009, ch. 447, § 25; reenacted without change, Laws, 2013, ch. 465, § 25, eff from and after July 1, 2013.

Editor's Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (1) by substituting "as provided in this chapter" for "as provided in this act." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Cross References — Prohibition against practicing acupuncture without a license, see § 73-71-37.

Penalties for practicing acupuncture without a license, see § 73-71-37.

§ 73-71-51. Fees.

(1) The board may charge reasonable fees for the following:

(a) Initial application fee for licensing;

(b) Written and practical examination not including the cost of the nationally recognized examination;

(c) Biennial licensing renewal for acupuncture practitioners;

(d) Late renewal more than thirty (30) days, but not later than one (1) year, after expiration of a license, which late fee is in addition to any other fees;

(e) Reciprocal licensing fee;

(f) Annual continuing education provider registration fee; and

(g) Any and all fees to cover reasonable and necessary administrative expenses as established by the Council of Advisors in Acupuncture.

(2) All fees shall be set forth in regulations duly adopted by the board.

(3) All fees and other funds collected under this chapter shall be deposited into the special fund of the State Board of Medical Licensure.

SOURCES: Laws, 2009, ch. 447, § 26; reenacted without change, Laws, 2013, ch. 465, § 26, eff from and after July 1, 2013.

§ 73-71-53. Repealed.

Repealed by Laws of 2017, ch. 391, § 3, effective July 1, 2017.

§ 73-71-53. [Laws, 2009, ch. 447, § 27; Laws, 2013, ch. 465, § 27, eff from and after July 1, 2013.]

Editor's Note — Former § 73-71-53 was the repealer for the Acupuncture Practice Act, §§ 73-71-1 through 73-71-51.

CHAPTER 73

Mississippi Certified Interior Designer Act

Sec.
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§ 73-73-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Certified Interior Designer Act."

SOURCES: Laws, 2011, ch. 360, § 1, eff from and after July 1, 2011.

§ 73-73-3. Purpose of chapter.

The purpose of this chapter is to establish the title of "Mississippi Certified Interior Designer" and to restrict the use of this title to those persons having specific interior design education, experience and examination, as defined in this chapter, and to require continuing education and adherence to a professional code of conduct by Mississippi Certified Interior Designers.

SOURCES: Laws, 2011, ch. 360, § 2, eff from and after July 1, 2011.

§ 73-73-5. Definitions.

The following words and phrases have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Board" means the State Board of Architecture as defined in Section 73-1-3.

(b) "Interior Design Advisory Committee" or "IDAC" means the jurisdictional committee responsible for making recommendations to the board for implementing interior design legislation and making rules and regulations. IDAC is comprised of Mississippi Certified Interior Designers and reports to the board. Decisions and actions of IDAC are subject to ratification by the board through review and approval of IDAC's minutes.

(c) "Mississippi Certified Interior Designer" means an interior design professional who holds a certification issued by the board. A certified interior designer shall not be considered to be a registered design professional as defined within the International Building Code or by building permit requirements.

(d) "Certificate" means the certificate issued by the board authorizing the holder of the certificate to use the title Mississippi Certified Interior Designer.

(e) "NCIDQ" means the National Council for Interior Design Qualification.

(f) "IDQE" means the Interior Design Qualification Examination as prepared and administered by NCIDQ or its successor.

(g) "CIDA" means Council for Interior Design Accreditation (formerly known as "FIDER" or the "Foundation for Interior Design Education Research").

(h) "MCID" means Mississippi Coalition for Interior Design or its successor.

SOURCES: Laws, 2011, ch. 360, § 3, eff from and after July 1, 2011.

§ 73-73-7. Application for certification; certification requirements; examination; disqualification from candidacy for certification.

(1) Beginning on July 1, 2012, the board and Interior Design Advisory Committee shall receive applications for certification as a Mississippi Certified Interior Designer on forms prescribed and furnished by the board and IDAC.

(2) Upon receipt of an application, the board, upon the recommendation of IDAC, may approve the application, provided the applicant meets one (1) of the following requirements:

(a) The applicant passed the IDQE as administered by NCIDQ before January 1, 2012;

(b) The applicant has a degree in interior design from a program accredited by the CIDA, a degree in architecture from a program accredited by the National Architectural Accreditation Board (NAAB), or a four-year degree in interior design from a college or university approved by the regulatory board. Additionally, the applicant must have passed the IDQE as administered by NCIDQ or its approved successor;

(c) The applicant is a licensed architect in the State of Mississippi who has passed the IDQE as administered by NCIDQ or its approved successor; or

(d) The applicant is a licensed engineer in the State of Mississippi who has passed the IDQE as administered by NCIDQ or its approved successor.

(3) The applicant must exhibit to the regulatory board and IDAC the applicant's good standing in the profession and the applicant's moral character. Except as otherwise provided in this subsection, any of the following acts shall preclude an applicant's eligibility as a candidate for certification:

(a) Conviction by any court for commission of any felony or any crime involving moral turpitude.

(b) Conviction by any court of a misdemeanor involving fraud, deceit or misrepresentation.

(c) Misstatement or misrepresentation of fact by the applicant in connection with the applicant's application for certification in this state or another jurisdiction.

(d) Violation of any of the rules of conduct required of applicants or interior designers as adopted by the board.

If the board determines that the applicant has shown clear and convincing evidence of rehabilitation and reform, the board may certify an applicant otherwise precluded from consideration because of an act prohibited under this subsection. A decision to certify an applicant notwithstanding the applicant's violation of an act prohibited under this subsection is in the sole discretion of the board and upon such terms, conditions and evidence as the board may require.

(4) The board and IDAC may require that the applicant appear before the board for a personal interview.

(5) The board, upon the recommendation of IDAC, may adopt or develop alternate routes of eligibility and examination requirements based on standards as set forth by NCIDQ or its approved successor.

(6) Any application submitted to the board and IDAC may be denied for any violation of the provisions of this chapter.

SOURCES: Laws, 2011, ch. 360, § 4, eff from and after July 1, 2011.

§ 73-73-9. Application for licensure through alternate eligibility methods; alternate qualifications.

(1) Any applicant who files an application with and remits initial fees to the board and IDAC before July 1, 2013, may be considered for alternate eligibility. Applications for licensure through the alternate eligibility method shall be accepted beginning on July 1, 2012. Any applicant submitting an application under this section shall be subject to the requirements of subsection (3) of Section 73-73-7.

(2) Alternate qualifications for eligibility are:

(a) Possession of a four-year degree in interior design from a nonaccredited program or another degree approved by the board and having passed all sections of the IDQE, or its successor; or

(b) Possession of ten (10) years of experience practicing in the profession of interior design and having passed all sections of the IDQE, or its successor.

(3) Any applicant who files with the board and IDAC an application and letter of intent to qualify under this section who has not taken and passed the IDQE shall have until July 1, 2013, to take and pass all code sections of the IDQE. The board and IDAC shall require verification of passage of the code sections of the IDQE as prepared and administered by the NCIDQ or its successor.

(4) Any application submitted to the board may be denied for any violation of this chapter.

(5) The board and IDAC may require that the applicant appear before the board or IDAC for a personal interview.

SOURCES: Laws, 2011, ch. 360, § 5, eff from and after July 1, 2011.

§ 73-73-11. Application from interior designer in another jurisdiction.

The board and IDAC may accept applications for Mississippi certification from an interior designer in another jurisdiction pursuant to Section 73-73-7 or 73-73-9. The issuance of a certification by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 2011, ch. 360, § 6; Laws, 2013, ch. 350, § 46, eff from and after July 1, 2013.

§ 73-73-13. Continuing education requirements.

Each Mississippi Certified Interior Designer shall be required to meet the continuing education requirements established by the board and IDAC. The board and IDAC shall set a minimum requirement of continuing education for the biennial reporting period.

SOURCES: Laws, 2011, ch. 360, § 7, eff from and after July 1, 2011.

§ 73-73-15. Renewal of certificate; payment of fees; penalty for nonpayment.

(1) Each Mississippi Certified Interior Designer who desires to renew a certificate pursuant to this chapter must submit to the board and IDAC: (a) the biennial certification renewal fee as set by rules and regulations; and (b) the certification renewal application, which shall require certification of compliance with continuing education requirements. The renewal fee shall be due and payable on the first day of January of each year in which the fee is required to be paid and shall become delinquent after January 31 of that year. If the renewal fee is not paid before it becomes delinquent, a penalty shall be

assessed in an amount per month as set by the board and IDAC. Upon failure to renew a certificate during the month of January of the renewal year, the certificate shall be rendered inactive at midnight on January 31 of the renewal year. A person with an inactive status certification is not allowed to use the title of Certified Interior Designer.

(2) If the renewal fee and penalty are not paid before June 1 of the year in which they become due, the Mississippi Certified Interior Designer's certificate shall no longer be eligible for renewal. A certificate rendered nonrenewable due to delinquency may be considered for reinstatement upon: (a) the payment of the reinstatement fee, as set by the board and IDAC; (b) receipt of the completed certificate reinstatement application; and (c) such other proof of the applicant's qualifications as may be required in the discretion of the board and IDAC.

(3) The board shall make available an acknowledgement of certification renewal or reinstatement to each Mississippi Certified Interior Designer promptly upon payment of the renewal fee or upon payment for and approval of the application for reinstatement.

SOURCES: Laws, 2011, ch. 360, § 8, eff from and after July 1, 2011.

§ 73-73-17. Issuance of temporary certificates prohibited.

The board shall not issue a temporary certificate, except as authorized under Section 73-50-1.

SOURCES: Laws, 2011, ch. 360, § 9; Laws, 2013, ch. 350, § 47, eff from and after July 1, 2013.

§ 73-73-19. Certified interior designer conduct and professional ethics.

(1) The board and IDAC shall set forth and regulate the conduct and professional ethics of those certified under this chapter.

(2) Conflict of Interest:

(a) A Mississippi Certified Interior Designer may not accept compensation for interior design services from more than one (1) party on a project unless the circumstances are fully disclosed to and accepted by all parties involved in the project. Any disclosure and agreement must be in writing.

(b) A Mississippi Certified Interior Designer may not solicit or accept compensation or gratuities from contractors, material or furniture suppliers, or manufacturer's sales representatives from endorsing their companies or specifying their products.

(3) Compliance with laws:

(a) A Mississippi Certified Interior Designer may not offer or make payment or gifts of value to elected or appointed government officials with the intent of influencing the decision or recommendation of that official in connection with a project in which the Mississippi Certified Interior Designer may be interested.

(b) A Mississippi Certified Interior Designer must comply with the certification laws and regulations governing the state recognition of interior design in other states and jurisdictions where the Mississippi Certified Interior Designer is certified or otherwise recognized as an interior designer.

(4) Full disclosure:

(a) A Mississippi Certified Interior Designer may not falsify or misrepresent his professional qualifications. A Mississippi Certified Interior Designer may not exaggerate his degree of responsibility in or for prior assignments. Presentations for the solicitation of employment or future projects may not misrepresent the work of a Mississippi Certified Interior Designer with the intent of enhancing the Mississippi Certified Interior Designer's qualifications.

(b) If, in the course of work on a project, the Mississippi Certified Interior Designer becomes aware of a decision or condition that may materially and adversely affect the safety and welfare of any member of the project team, owner or the public, the Mississippi Certified Interior Designer shall report the condition to the design professional of record or a public building official.

SOURCES: Laws, 2011, ch. 360, § 10, eff from and after July 1, 2011.

§ 73-73-21. Posting certificate in prominent place.

Each person holding a certificate as a Mississippi Certified Interior Designer in this state shall post the certificate in a prominent place in the interior designer's place of business.

SOURCES: Laws, 2011, ch. 360, § 11, eff from and after July 1, 2011.

§ 73-73-23. Interior Design Advisory Committee; membership; terms.

(1) IDAC shall be comprised of five (5) members, each being a Mississippi Certified Interior Designer residing in this state who has been engaged in interior design not less than seven (7) years. It is the duty of IDAC to carry out the purposes of this chapter as herein provided.

(2) The Governor shall appoint the members of IDAC from a list of names supplied by MCID, or its successor. Each member of IDAC shall serve for a term of five (5) years. Each interior designer initially appointed must be qualified to become a Mississippi Certified Interior Designer. Thereafter, each new appointee must be a Mississippi Certified Interior Designer. The terms of the members of IDAC shall be staggered so that the term of not more than one (1) member expires each year on June 1.

(3) Each member shall hold over the expiration of his term until his successor is duly appointed and qualified. The Governor, in like manner, shall fill any vacancy occurring in the membership of IDAC for the unexpired term of such membership. The Governor may remove any of the members of IDAC for inefficiency, neglect of duty or dishonorable conduct.

(4) At the first meeting of every calendar year, IDAC shall elect from among its members a chairman and a secretary to hold office for one (1) year.

(5) The executive director of the board shall keep a true and correct record of all proceedings of IDAC.

SOURCES: Laws, 2011, ch. 360, § 12, eff from and after July 1, 2011.

§ 73-73-25. Adoption of rules and regulations; IDAC member oath of office.

(1) IDAC, subject to the approval of the board, may adopt only rules or regulations that are consistent with law as may be necessary to carry out the duties and authorities conferred upon the committee.

(2) The rules and regulations may address, but need not be limited to, the following matters:

(a) Administration and enforcement of provisions of this chapter.

(b) Regulations to carry out the policies of this chapter.

(c) Setting certification fees.

(d) Reviewing, approving or disapproving, and making recommendations on all applications for certification.

(e) Establishing continuing education requirements for certificate renewal.

(f) Maintaining the official roster of Mississippi Certified Interior Designers.

(g) Adopting requirements for monitored internship.

(h) Adopting rules of conduct that are clear, quantifiable and enforceable by rules and regulations.

(i) Exercising the authority to assess monetary administrative penalties for violations of the laws, rules and regulations that IDAC regulates.

(j) Providing access to persons with physical, mental or developmental disability to IDAC's programs and activities.

(k) At the direction of the board, IDAC also shall review and investigate any charges brought against any Mississippi Certified Interior Designer as provided for in Section 73-73-19 and make findings of fact and recommendations to the board concerning any disciplinary action which IDAC deems necessary and proper pursuant to Section 73-73-31.

(3) Before entering upon the discharge of their duties, each member of IDAC shall take a subscribed oath of office.

(4) The board and IDAC shall adopt all necessary rules, regulations and bylaws to govern its proceedings not inconsistent with this chapter or the laws of this state.

(5) The executive director of the board shall keep a record of all proceedings of IDAC, which shall be open to the public. These records shall be maintained at the office of the board.

(6) Three (3) members of IDAC shall constitute a quorum.

SOURCES: Laws, 2011, ch. 360, § 13, eff from and after July 1, 2011.

§ 73-73-27. Deposit and use of funds from fees and fines.

All funds received from interior designer certification, renewal fees and fines shall be deposited into the account of the board and utilized in part for expenses of IDAC at the direction of the board. A complete statement of the transactions shall be included in the board's annual report.

SOURCES: Laws, 2011, ch. 360, § 14, eff from and after July 1, 2011.

§ 73-73-29. Payment of IDAC and board expenses; per diem and reimbursement of travel expenses for IDAC members.

(1) The board may pay, from certification and other fees authorized under this chapter, the expenses of IDAC and the board. In no case may any of the fees or expenses be paid by the State of Mississippi or be charged against the state.

(2) Each member of IDAC shall receive a per diem in an amount set by the board but not to exceed the amount provided for in Section 25-3-69. Members of IDAC shall be reimbursed for their traveling expenses incurred in the pursuance of their duties.

SOURCES: Laws, 2011, ch. 360, § 15, eff from and after July 1, 2011.

§ 73-73-31. Revocation, suspension or annulment of certificate; reprimand, censure or other disciplinary procedures; grounds; hearing; probation; reissuance of revoked or suspended certificate.

(1) The board may revoke, suspend or annul the certificate of a Mississippi Certified Interior Designer or reprimand, censure or otherwise discipline a Mississippi Certified Interior Designer.

(2) The board and IDAC, upon satisfactory proof and in accordance with the provisions of this chapter, may take any necessary disciplinary actions against any Mississippi Certified Interior Designer for any of the following reasons:

(a) Violating any of the provisions of this chapter, or the bylaws, rules, regulations or standards of ethics or conduct duly adopted and promulgated by IDAC pertaining to using the title Mississippi Certified Interior Designer;

(b) Obtaining or attempting to obtain a certificate as a Mississippi Certified Interior Designer by fraud, deceit or misrepresentation;

(c) Gross negligence, malpractice, incompetence or misconduct by a Mississippi Certified Interior Designer;

(d) Any professional misconduct, as defined by IDAC through bylaws, rules and regulations and standards of conduct and ethics;

(e) Use of the term Mississippi Certified Interior Designer on an expired certificate or while under suspension or revocation of a certificate unless such suspension or revocation is abated through probation, as provided for in this chapter;

(f) Use of the term Mississippi Certified Interior Designer under an assumed or fictitious name;

(g) Being convicted by any court of a felony, except conviction of culpable negligent manslaughter, in which case the record of conviction shall be conclusive evidence;

(h) Willfully misleading or defrauding any person employing him or her as a Mississippi Certified Interior Designer by any artifice or false statement; or

(i) Having any undisclosed financial or personal interest which compromises his obligation to his client.

(3) Any person may prefer charges against any other person for committing any of the acts set forth in this section. The charges, which need not be sworn to, may be made upon actual knowledge, or upon information and belief, and must be filed with the board. If any person certified under this chapter is expelled from membership in any Mississippi or national professional interior design society or association, the board and IDAC shall thereafter cite such person to appear at a hearing before the board and IDAC to show cause why disciplinary action should not be taken against that person.

The board and IDAC shall investigate all charges filed with it and, upon finding reasonable cause to believe that the charges are not frivolous, unfounded or filed in bad faith, may cause, in its discretion, a hearing to be held at a time and place fixed by the board regarding the charges. The board may compel, by subpoena, the accused to appear before the board to respond to the charges.

No disciplinary action may be taken until the accused has been furnished with both a statement of the charges against him and notice of the time and place of the hearing on those charges, which must be served personally on the accused or mailed by registered or certified mail, return receipt requested, to the last known business or residence address of the accused not less than thirty (30) days before the date fixed for the hearing.

(4) At a hearing held under this section, the board may subpoena witnesses and compel their attendance and require the production of any books, papers or documents. The hearing must be conducted before the full board and IDAC with the president of the board serving as the presiding officer. Counsel for the board shall present all evidence relating to the charges. All evidence must be presented under oath, which may be administered by any member of the board. The proceedings, if necessary, may be transcribed in full by a court reporter and filed as part of the record in the case. Copies of the transcription may be provided to any party to the proceedings at a cost to be fixed by the board.

All witnesses who are subpoenaed and who appear in any proceeding before the board shall receive the same fee and mileage as allowed by law in judicial civil proceedings, and all such fees shall be taxed as part of the costs of the case.

In any proceedings before the board in which any witness fails or refuses to attend upon a subpoena issued by the board or refuses to testify or to produce any books and papers, the production of which is called for by the subpoena, the attendance of the witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

The accused shall have the right to be present at the hearing in person, by counsel or other representative, or both. The accused shall have the right to present evidence and to examine and cross-examine all witnesses. The board may continue or recess the hearing as may be necessary.

(5) At the conclusion of the hearing, the board may either decide the issue at the time or take the case under advisement for further deliberation. The board must render its decision not more than forty-five (45) days after the close of the hearing and shall forward to the last known business or residence address of the accused by certified or registered mail, return receipt requested, a written statement of the decision of the board.

If a majority of the board finds the accused guilty of the charges filed, the board may:

(a) Issue a public or private reprimand;

(b) Suspend or revoke the certificate of the accused, if the accused is a Mississippi Certified Interior Designer; or

(c) In lieu of or in addition to such reprimand, suspension or revocation, assess and levy upon the guilty party a monetary penalty of not less than One Hundred Dollars ($100.00) nor more than Five Thousand Dollars ($5,000.00) for each violation.

(6) A monetary penalty assessed and levied under this section must be paid to the board within thirty (30) days. Money collected by the board under this section and all fines shall be deposited into the account of the board.

When payment of a monetary penalty assessed and levied by the board under this section is not paid when due, the board may institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county of the residence of the guilty party. If the guilty party is a nonresident of the State of Mississippi, the proceedings must be instituted in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(7) When the board has taken a disciplinary action under this section, the board, in its discretion, may stay the action and place the guilty party on probation for a period not to exceed one (1) year, upon the condition that the guilty party shall not further violate either the law of the State of Mississippi pertaining to the use of the term Mississippi Certified Interior Designer or the rules and regulations or standards of conduct and ethics promulgated by IDAC and the board.

(8) The board, in its discretion, may assess and tax any part of all costs of any disciplinary proceedings conducted under this section against the accused if the accused is found guilty of the charges.

(9) The power and authority of the board to assess and levy the monetary penalties provided for in this section shall not be affected or diminished by any

other proceedings, civil or criminal, concerning the same violation or violations except as provided in this section.

(10) The board, on the recommendation of IDAC, for sufficient cause, may reissue a revoked certificate by an affirmative vote of a majority of the board members; however, a revoked certificate may not be issued within two (2) years of the revocation under any circumstances. A new certificate required to replace a revoked certificate may be issued, subject to the rules of the board, for a charge established by the rules and regulations set forth by IDAC.

(11) In addition to the reasons specified in this section, the board may suspend the certificate of any person for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a certificate for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a certificate suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a certificate suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

The board, for reasons it may deem sufficient, may reissue a certificate to any person whose certificate has been suspended or revoked if three (3) or more members of the board vote in favor of the reissuance. The procedure for the reissuance of a certificate that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

SOURCES: Laws, 2011, ch. 360, § 16, eff from and after July 1, 2011.

§ 73-73-33. Appeal of order, judgment or action of the board.

Within thirty (30) days after entry of a final order or judgment denying or revoking a certificate to practice as a Certified Interior Designer, whether an initial licensure or renewal, or action of the board as a result of disciplinary proceedings conducted under this section, any person aggrieved may appeal the order, judgment or action either to the chancery court of the county in which the appellant resides or to the Chancery Court of the First Judicial District of Hinds County, Mississippi, upon giving bond with sufficient security in the amount of Five Hundred Dollars ($500.00), approved by the clerk of the chancery court and conditioned to pay any costs which may be adjudged against the person. If the appellant is a nonresident of this state, the appeal shall be made to the Chancery Court of the First Judicial District of Hinds County, Mississippi.

Notice of appeal shall be filed in the office of the clerk of the chancery court, who shall issue a writ of certiorari directed to the board commanding it, within ten (10) days after service, to certify to the court its entire record in the matter in which the appeal has been taken. The content of the briefs shall be in accordance with M.R.A.P. 28 and the briefing schedule shall be in accordance with M.R.A.P. 31 unless the court, in its discretion, directs otherwise. The appeal shall be heard in due course by the court, and the court shall review the record and make its determination of the cause between the parties within sixty (60) days of the close of briefing.

Any order, judgment or decision of the board shall not take effect until after the time for appeal to the court shall have expired. All appeals perfected under this section shall act as a supersedeas of the order, judgment or action appealed from.

SOURCES: Laws, 2011, ch. 360, § 17; Laws, 2015, ch. 370, § 2, eff from and after passage (approved Mar. 17, 2015.)

§ 73-73-35. Violation of chapter; penalties.

It is a misdemeanor for any person to:

(a) Offer to hold himself out as a Mississippi Certified Interior Designer, unless duly certified under this chapter.

(b) Present as his own the certificate of another.

(c) Give false or forged evidence to the board or any member of the board in obtaining a certificate.

(d) Falsely impersonate any other practitioner of like or different name.

(e) Use or attempt to use a certificate that has been revoked.

(f) Otherwise violate any provision of this chapter.

A misdemeanor under this section is punishable by a fine of not less than Five Hundred Dollars ($500.00) and not more than One Thousand Dollars ($1,000.00), or imprisonment for not more than one (1) year in the county jail, or both.

If any person, firm or corporation violates any provision of this chapter, the secretary of the board, upon direction of a majority of the board and in the name of the State of Mississippi, shall apply, through an attorney employed by the board, in any chancery court of competent jurisdiction for an order enjoining that violation or for an order enforcing compliance with the provisions of this chapter. Upon the filing of a verified petition in the proper court, the court or any judge of that court, if satisfied by the sworn petition, affidavit or otherwise, that the person has violated this chapter may issue a temporary injunction of five (5) days' notice to the defendant enjoining the continued violation, and the injunction shall remain in force and effect until final hearing. If it is established at the hearing that the person has violated, or is violating this chapter, the court may enter a decree permanently enjoining the violation or enforcing compliance with this chapter and awarding all costs and expenses, including reasonable attorney's fees, to the board. In case of violation of any decree issued in compliance with this section, the court may try and punish the offender for contempt of court and shall fine the offender a sum of not less than Two Hundred Fifty Dollars ($250.00) per offense. Each day of the violation is a separate offense, and the court shall proceed as in other cases in chancery.

The proceedings in this section shall be in addition to and not in lieu of the other remedies and penalties provided in this chapter.

SOURCES: Laws, 2011, ch. 360, § 18, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section. In paragraph (a), "Registered" was deleted preceding "Interior Designer." The Joint Committee ratified the correction at its August 16, 2012, meeting.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 75

Licensed Behavior Analysts

Sec.

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§ 73-75-1. License required.

In order to safeguard life, health and property, no person shall practice applied behavior analysis in this state, or use the title "Licensed Behavior Analyst" or "Licensed Assistant Behavior Analyst," unless such person has secured a license under this chapter.

SOURCES: Laws, 2015, ch. 415, § 2, eff from and after July 1, 2015.

Editor's Note — Laws of 2015, ch. 415, § 16, effective July 1, 2015, provides:
"SECTION 16. Section 1 of this act shall be codified as a new section in Chapter 9, Title 83, Mississippi Code of 1972 [Section 83-9-26]. Sections 2 through 15 of this act shall be codified as a new chapter in Title 73, Mississippi Code of 1972 [Chapter 75, Sections 73-75-1 through 73-75-27]."

§ 73-75-3. Definitions.

The following definitions apply as used in this chapter, unless the context otherwise requires:

(a) "Board" means the Mississippi Autism Board.

(b) "Person" means any individual, organization or corporate body, except that only an individual may be licensed under this chapter.

(c) "Practice of applied behavior analysis" means interventions based on scientific research and the direct observation and measurement of behavior and the environment. Behavior analysts utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of behavior analysis expressly excludes psychological testing, diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

(d) "Licensed behavior analyst" means an individual currently certified by the Behavior Analyst Certification Board as a Board Certified Behavior Analyst (BCBA) or Board Certified Behavior Analyst-Doctoral (BCBA-D) and licensed under Section 73-75-13(d) to practice applied behavior analysis.

(e) "Licensed assistant behavior analyst" means an individual currently certified by the Behavior Analyst Certification Board as a Board Certified Assistant Behavior Analyst (BCABA) and licensed pursuant to Section 73-75-13(e) to practice applied behavior analysis under the supervision of a licensed behavior analyst.

(f) "Behavior technician" means an individual currently certified by the Behavior Analyst Certification Board as a Registered Behavior Technician (RBT) to provide applied behavior analysis treatments under the supervision and direction of a licensed behavior analyst or licensed assistant behavior analyst.

SOURCES: Laws, 2015, ch. 415, § 3, eff from and after July 1, 2015.

§ 73-75-5. Scope of chapter.

(1) Nothing in this chapter shall be construed as preventing or restricting the practice of any of the following:

(a) A licensed psychologist, subject to any rules or regulations of the Mississippi Board of Psychology;

(b) Other licensed health care professionals authorized to practice in the state, so long as the services of the professional are commensurate with the professional's demonstrated competence and training and within the scope of practice regulated by the professional's licensing authority;

(c) A behavior technician who implements certain applied behavior analysis procedures under the extended authority and direction of a licensed behavior analyst or licensed assistant behavior analyst, provided that the behavior technician is supervised in accordance with the Behavior Analyst Certification Board's supervision standards;

(d) A family member or guardian of a recipient of applied behavior analysis services who implements certain applied behavior analysis procedures in compliance with the training and direction of a licensed behavior analyst or licensed psychologist;

(e) A behavior analyst who practices with nonhumans, including applied animal behaviorists and animal trainers;

(f) An individual who is pursuing supervised experiential training to meet eligibility requirements for Behavior Analyst Certification Board certification, provided that such training is supervised by a licensed behavior analyst and who meet Behavior Analyst Certification Board supervisor requirements, and that the supervised experience is conducted in accordance with other Behavior Analyst Certification Board standards and requirements;

(g) An individual who teaches behavior analysis or conducts behavior analytic research, provided that such teaching or research does not involve the delivery of direct behavior analytic services;

(h) A professional behavior analyst who provides general behavior analytic services to organizations, so long as those services are for the benefit of the organizations and do not involve direct services to individuals;

(i) A matriculated college or university student whose applied behavior analysis activities are part of a defined course, internship, practicum, or program of study and are supervised by a licensed behavior analyst or an instructor in a Behavior Analyst Certification Board-approved course sequence or practicum. Students and interns must not represent themselves as professional behavior analysts but must use titles that clearly indicate their trainee status, such as "student," "intern," or "trainee"; and

(j) Individuals employed by a school board while performing the regular duties of their office or position. Such individuals shall not represent themselves as professional behavior analysts unless they are licensed behavior analysts or licensed assistant behavior analysts, and shall not offer behavior analytic services to any persons or entities other than their school employer or accept remuneration for providing behavior analytic services other than the remuneration they receive from their school employer.

(2) Subsection (1) of this section shall not be interpreted to expand the scope of practice of any licensed professional who is not licensed pursuant to this chapter; no individual described in subsection (1) may provide applied behavior analysis treatment outside the scope of their licensed practice.

SOURCES: Laws, 2015, ch. 415, § 4, eff from and after July 1, 2015.

§ 73-75-7. Mississippi Autism Board; membership; term of office; appointment; qualifications.

(1) The board shall consist of five (5) members. The Governor shall appoint one (1) licensed psychologist practicing in the area of applied behavior analysis, one (1) licensed behavior analyst, and one (1) public member who is not licensed in behavior analysis and who is the family member of a recipient of applied behavior analysis services. The Lieutenant Governor shall appoint two (2) licensed behavior analysts.

(2) The licensed psychologist member shall serve an initial term of one (1) year, the licensed behavior analyst appointed by the Governor shall serve an initial term of two (2) years, the public member shall serve an initial term of three (3) years, and the two (2) licensed behavior analysts appointed by the Lieutenant Governor shall serve initial terms of four (4) years. All subsequent appointees shall serve four-year terms.

(3) All appointees shall serve at the will and pleasure of the appointing official.

(4) Each board member shall serve without compensation, but shall receive actual traveling and incidental expenses necessarily incurred while engaged in the discharge of official duties.

SOURCES: Laws, 2015, ch. 415, § 5, eff from and after July 1, 2015.

Cross References — Board of psychology to administer and support function of Mississippi Autism Board relating to licensure of licensed behavior analysts and licensed assistant behavior analysts, see § 73-31-7.

§ 73-75-9. Authority of the board.

(1) The board shall annually elect from its membership a chairman and executive secretary at a meeting held during the last two (2) quarters of the fiscal year. The board shall meet at any other times as it deems necessary or advisable. Reasonable notice of all meetings shall be given in the manner prescribed by the board and in accordance with state law. The presence of three (3) members shall constitute a quorum.

(2) The board is authorized and empowered to:

(a) Investigate and evaluate each and every applicant applying for a license to practice applied behavior analysis;

(b) Issue subpoenas, examine witnesses and administer oaths, and shall, at its discretion, investigate allegations or practices violating the provisions of this chapter; and

(c) Adopt and, from time to time, revise any rules and regulations not inconsistent with, and as may be necessary to carry into effect, the provisions of this chapter.

SOURCES: Laws, 2015, ch. 415, § 6, eff from and after July 1, 2015.

§ 73-75-11. Financing administration of provisions; fees and assessments to be collected by State Board of Psychology.

(1) The administration of the provisions of this chapter shall be financed from income accruing from fees, licenses and other charges assessed and collected by the board and from such other funds available to the board. From and after July 1, 2018, the fees and assessments shall be collected by the State Board of Psychology.

(2) The board shall receive and account for all funds received and shall keep such funds in a separate fund. Funds collected under the provisions of this chapter shall be used solely for the expenses of the board and to administer the provisions of this chapter, which may include full or partial financing of continuing education programs promulgated by the board under this chapter. Such funds shall be subject to audit by the Auditor of the State of Mississippi.

(3) The Mississippi Autism Board shall be assigned to the Mississippi Office of the Secretary of State for administrative and ministerial purposes; and from and after July 1, 2018, the Mississippi Autism Board shall be

assigned to the State Board of Psychology for administrative and ministerial purposes.

SOURCES: Laws, 2015, ch. 415, § 7; Laws, 2017, 1st Ex Sess, ch. 7, § 33, eff from and after passage (approved June 23, 2017.)

Amendment Notes — The 2017 amendment, effective June 23, 2017, added the last sentence of (1); and rewrote (3), which read: "The board shall be assigned to the Office of the Secretary of State for administrative and ministerial purposes."

§ 73-75-13. Eligibility for license.

To be eligible for licensure by the board as a behavior analyst or assistant behavior analyst, a person shall:

(a) Submit to the board an application, upon such form and in such manner as the board shall prescribe, along with the applicable fee and personal references;

(b) Certify that the applicant has not been convicted of a felony as defined by the laws of the State of Mississippi;

(c) Undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety and the Federal Bureau of Investigation Identification Division for this purpose; and

(d) For a behavior analyst:

(i) Possess at least a master's degree, or its equivalent, from an educational institution recognized by the board;

(ii) Have current and active certification by the Behavior Analyst Certification Board as a Board Certified Behavior Analyst (BCBA) or Board Certified Behavior Analyst-Doctoral (BCBA-D), verified by the board; and

(iii) Comply with such other requirements of the board.

(e) For an assistant behavior analyst:

(i) Possess a bachelor's degree, or its equivalent, from an educational institution recognized by the board;

(ii) Have current and active certification by the Behavior Analyst Certification Board as a Board Certified Assistant Behavior Analyst (BCABA), verified by the board; and

(iii) Provide proof of ongoing supervision by a licensed behavior analyst.

(f) All licenses issued pursuant to this section shall be for a term of three (3) years, but shall not exceed the expiration of the licensee's certification by the Behavior Analyst Certification Board.

SOURCES: Laws, 2015, ch. 415, § 8, eff from and after July 1, 2015.

§ 73-75-15. Waiver of eligibility requirements.

The board may waive the examination for licensure of any applicant who presents proof of current licensure in another state, including the District of Columbia, or territory of the United States which maintains professional standards considered by the board to be equivalent to those set forth in this chapter. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SOURCES: Laws, 2015, ch. 415, § 9, eff from and after July 1, 2015.

§ 73-75-17. Temporary licenses.

The board shall draft rules and regulations for the granting and renewal of temporary licenses for applicants who have met all eligibility requirements for certification by the Behavior Analyst Certification Board, have taken a certification examination, and are awaiting results of the examination, but otherwise meet the requirements of this chapter.

SOURCES: Laws, 2015, ch. 415, § 10, eff from and after July 1, 2015.

§ 73-75-19. License denial, suspension, or revocation.

(1) The board, by an affirmative vote of at least three (3) of its five (5) members, shall withhold, deny, revoke or suspend any license issued or applied for in accordance with the provisions of this chapter, or otherwise discipline a licensed behavior analyst or licensed assistant behavior analyst upon finding that the applicant or licensee:

(a) Has violated the current Behavior Analyst Certification Board Professional Disciplinary and Ethical Standards, the Behavior Analyst Certification Board Guidelines for Responsible Conduct for Behavior Analysts, or other codes of ethical standards adopted by the board, or has lost or failed to renew certification by the Behavior Analyst Certification Board; or

(b) Has been convicted of a felony or any offense involving moral turpitude, the record of conviction being conclusive evidence thereof; or

(c) Is using any narcotic or any alcoholic beverage to an extent or in a manner dangerous to any other person or the public, or to an extent that such use impairs his ability to perform the work of a licensed behavior analyst or licensed assistant behavior analyst; or

(d) Has impersonated another person holding a license issued under this chapter or allowed another person to use his license; or

(e) Has used fraud or deception in applying for a license provided for in this chapter; or

(f) Has accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons; or

(g) Has allowed his name or license issued under this chapter to be used in connection with any person or persons who perform applied behavior analysis services outside the area of their training, experience or competence; or

(h) Is legally adjudicated mentally incompetent, the record of such adjudication being conclusive evidence thereof; or

(i) Has willfully or negligently violated any of the provisions of this chapter.

(2) The board may recover from any person disciplined under this chapter the costs of investigation, prosecution, and adjudication of the disciplinary action.

(3) Notice shall be effected by registered mail or personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days nor more than sixty (60) days from the date of such mailing or such service, at which time the applicant or licensee shall be given an opportunity for a prompt and fair hearing. For the purpose of such hearing the board, acting by and through its executive secretary, may exercise all authority granted to conduct investigations and hearings pursuant to Section 73-75-9(2)(a) and (b). At such hearing the applicant or licensee may appear by counsel and personally on his own behalf. On the basis of any such hearing, or upon default of applicant or licensee, the board shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision of the board denying, revoking or suspending the license shall become final thirty (30) days after so mailed or served unless within that period the licensee appeals the decision to the Chancery Court of Madison or Rankin Counties, pursuant to the provisions hereof, and the proceedings in chancery shall be conducted as other matters coming before the court. All proceedings and evidence, together with exhibits, presented at such hearing before the board in the event of appeal, shall be admissible in evidence in the court.

(4) Nothing in this subsection shall be interpreted to prohibit the board from immediately suspending any license prior to a hearing under subsection (3) of this section, when in its sole discretion the suspension is required for the instruction, safety or well-being of any member of the public.

(5) Every order and judgment of the board shall take effect immediately upon its promulgation unless the board in such order or judgment fixes a probationary period for applicant or licensee. Such order and judgment shall continue in effect unless upon appeal the court by proper order or decree terminates it earlier. The board may make public its order and judgments in such manner and form as it deems proper.

(6) Suspension by the board of a license issued under this chapter shall be for a period not to exceed one (1) year. At the end of this period the board shall reevaluate the suspension, and shall either reinstate or revoke the license. A person whose license has been revoked under the provisions of this section may reapply for license after more than two (2) years have elapsed from the date such revocation is legally effective.

(7) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out

of compliance with an order for support, in compliance with the procedures set forth in Sections 93-11-151 through 93-11-163.

SOURCES: Laws, 2015, ch. 415, § 11, eff from and after July 1, 2015.

§ 73-75-21. Procedure and fees for renewal.

(1) Except as provided in Section 33-1-39, every applicant for license or renewal pursuant to this chapter shall pay to the board a fee determined by the board, but not to exceed:

(a) Two Hundred Fifty Dollars ($250.00), in addition to the cost of obtaining the criminal history record, for behavior analysts; and

(b) One Hundred Dollars ($100.00), in addition to the cost of obtaining the criminal history record, for assistant behavior analysts.

(2) Individuals licensed pursuant to this chapter shall apply for renewal every three (3) years, or upon renewal of certification by the Behavior Analyst Certification Board, have current certification by the Behavior Analyst Certification Board verified by the board, and present evidence of the satisfactory completion of continuing education requirements as determined by the board. The board shall issue a renewal of the license for a term of three (3) years to any licensee complying with the requirements of this section.

(3) A lapsed license under this chapter may be renewed within a period of two (2) years after the lapse, upon payment of all fees in arrears and verification by the board that the applicant is currently certified by the Behavior Analyst Certification Board. An individual wishing to renew a license that has been lapsed for more than two (2) years shall be required to reapply for licensure.

SOURCES: Laws, 2015, ch. 415, § 12, eff from and after July 1, 2015.

§ 73-75-23. Duty to register behavior technicians.

Licensed behavior analysts and licensed assistant behavior analysts must register with the board all behavior technicians providing services under their supervision. The licensed behavior analyst or licensed assistant behavior analyst shall update the board of the termination of supervision as required by the board.

SOURCES: Laws, 2015, ch. 415, § 13, eff from and after July 1, 2015.

§ 73-75-25. Offenses and penalties.

Any person who violates any provision of this chapter shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or imprisoned in the county jail for a period not exceeding six (6) months, or both.

SOURCES: Laws, 2015, ch. 415, § 14, eff from and after July 1, 2015.

§ 73-75-27. Fees deposited in special fund; collection of fees and penalties by State Board of Psychology and use thereof.

All fees collected by the board under this chapter and any penalties collected by the board for violations of this chapter shall be deposited in a special fund hereby created in the State Treasury and shall be used for the implementation and administration of this chapter when appropriated by the Legislature for such purpose. From and after July 1, 2018, the fees and penalties shall be collected by the State Board of Psychology and used for the implementation and administration of this chapter.

SOURCES: Laws, 2015, ch. 415, § 15; Laws, 2017, 1st Ex Sess, ch. 7, § 34, eff from and after passage (approved June 23, 2017.)

Amendment Notes — The 2017 amendment, effective June 23, 2017, added the last sentence.

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